S. HRG. 98-870

RICHARD H. FRANCIS NOMINATION

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON THE

NOMINATION OF

DR. RICHARD H. FRANCIS TO BE PRESIDENT, SOLAR ENERGY AND ENERGY CONSERVATION BANK

FEBRUARY 23, 1984

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE

37-266 O WASHINGTON : 1984

S311-43

COMMITTEE ON ENERGY AND NATURAL RESOURCES

JAMES A. McCLURE, Idaho, *Chairman*

MARK O. HATFIELD, Oregon
LOWELL P. WEICKER, JR., Connecticut
PETE V. DOMENICI, New Mexico
MALCOLM WALLOP, Wyoming
JOHN W. WARNER, Virginia
FRANK H. MURKOWSKI, Alaska
DON NICKLES, Oklahoma
CHIC HECHT, Nevada
JOHN H. CHAFEE, Rhode Island
JOHN HEINZ, Pennsylvania
DANIEL J. EVANS, Washington

J. BENNETT JOHNSTON, Louisiana
DALE BUMPERS, Arkansas
WENDELL H. FORD, Kentucky
HOWARD M. METZENBAUM, Ohio
SPARK M. MATSUNAGA, Hawaii
JOHN MELCHER, Montana
PAUL E. TSONGAS, Massachusetts
BILL BRADLEY, New Jersey
CARL LEVIN, Michigan

MICHAEL D. HATHAWAY, *Staff Director*
CHARLES A. TRABANDT, *Chief Counsel*
D. MICHAEL HARVEY, *Chief Counsel for the Minority*

CONTENTS

STATEMENTS

	Page
Francis, Dr. Richard H., nominee to be President, Solar Energy and Energy Conservation Bank	3
McClure, James A., a U.S. Senator from the State of Idaho	1
Morgan-Hubbard, Margaret, board of directors, Solar Lobby, as presented by Joan Moody, public relations assistant, Solar Lobby	28
Warner, Hon. John W., a U.S. Senator from the State of Virginia	2

APPENDIXES

APPENDIX I

Informational statement of Dr. Richard H. Francis 55

APPENDIX II

Responses of Dr. Richard H. Francis to questions submitted by Senator Evans and Senator Tsongas 72

APPENDIX III

Additional statement submitted for the record 83

RICHARD H. FRANCIS NOMINATION

THURSDAY, FEBRUARY 23, 1984

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 10 a.m., in room SD-366, Dirksen Office Building, Hon. James A. McClure (chairman) presiding.

Present: Senators McClure, Hecht, Evans, and Levin.

Also present: Charles A. Trabandt, chief counsel; E. David Doane, deputy chief counsel for energy; D. Michael Harvey, chief counsel for the minority; and James T. Bruce, counsel for the minority.

OPENING STATEMENT OF HON. JAMES A. McCLURE, A U.S. SENATOR FROM THE STATE OF IDAHO

The CHAIRMAN. The committee will come to order.

Today the committee will consider the nomination of Richard H. Francis to be President of the Solar Energy and Energy Conservation Bank.

I am very pleased that the administration has forwarded this nomination for this important position. Many members of this committee had important roles in the enactment of legislation creating the Solar Bank and continue to have a very strong interest in the way the Bank is administered.

Dr. Francis' nomination was jointly referred to the Banking, Housing, and Urban Affairs Committee. That committee reported his nomination by a vote of 18 to 0 on February 9, 1984.

Dr. Francis has served as the manager of the Solar Energy and Energy Conservation Bank since June of 1982. Previously, he was senior policy advisor to the Assistant Secretary for Policy Development and Research at the Department of Housing and Urban Development.

Dr. Francis has also held senior positions in educational and housing organizations and served as an officer in the Marine Corps for 20 years.

Dr. Francis, I am pleased to welcome you to the committee this morning and look forward to your testimony.

At this point a statement by Senator Warner will be placed in the record in full. He wanted to express his regrets that he had another appointment this morning, and thus was not able to attend. He asked that we place his statement in the record.

[The prepared statement of Senator Warner follows:]

STATEMENT OF SENATOR JOHN W. WARNER

FEBRUARY 23, 1984

I REGRET THAT A PRIOR COMMITMENT PREVENTS ME FROM BEING PRESENT TODAY TO INTRODUCE TO THE COMMITTEE DR. RICHARD H. FRANCIS OF MY HOME STATE OF VIRGINIA TO BE THE DIRECTOR OF THE SOLAR ENERGY AND ENERGY CONSERVATION BANK.

RICHARD FRANCIS HAS SERVED AS CHIEF OPERATING OFFICER OF THE BANK SINCE ITS REACTIVATION IN THE DEPARTMENT LAST YEAR, FIRST AS COMPTROLLER, THEN AS MANAGER. HE HAS BEEN ENGAGED IN ALL ACTIVITIES RELATED TO START-UP ACTIVITIES FROM PROVIDING DISCUSSION MATERIALS AT BOARD MEETINGS, ESTABLISHING BANK POLICY, TESTIFYING BEFORE THE CONGRESS, AND RUNNING THE DAY-TO-DAY OPERATIONS OF THE BANK.

PRIOR TO SERVING IN THIS CAPACITY, HE WAS SENIOR POLICY ADVISOR TO THE ASSISTANT SECRETARY FOR POLICY, DEVELOPMENT AND RESEARCH AT THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. HIS RESPONSIBILITIES ENTAILED THE DEVELOPMENT AND IMPLEMENTATION OF NEW POLICIES, PROGRAMS AND PROJECTS ON NATIONAL HOUSING MATTERS.

IN HIS CAREER IN THE MILITARY, HIGHER EDUCATION AND HOUSING AREAS, HE HAS HELD SENIOR MANAGEMENT POSITIONS IN BOTH LARGE AND SMALL ORGANIZATIONS. THIS HAS INCLUDED PUTTING THREE ORGANIZATIONS INTO OPERATION FROM THEIR INCEPTION, TWICE AS CHIEF OPERATING OFFICER. HE HAS A TECHNICAL BACKGROUND, GAINED DURING STUDIES IN ENGINEERING AT THE U. S. NAVAL ACADEMY.

IN ADDITION, DURING HIS MILITARY CAREER, HE WAS DIRECTLY INVOLVED IN RESEARCH AND DEVELOPMENT BOTH IN THE AREAS OF EQUIPMENT AND POLICY DEVELOPMENT.

DR. FRANCIS BRINGS A WIDE VARIETY OF EXPERIENCES TO THIS POSITION, AND I AM REGRET I COULD NOT BE WITH YOU TODAY TO PRESENT HIM PERSONALLY TO THE COMMITTEE.

(#)

The CHAIRMAN. Dr. Francis, the rules of the committee which we apply to all nominees who come before us for confirmation require that they be sworn in connection with their testimony.

Will you please rise and raise your right hand.

[Whereupon, Dr. Richard H. Francis was duly sworn by the chairman.]

The CHAIRMAN. Please be seated.

There are also four questions that we ask of every nominee and I would like to ask these questions of you.

Will you be available to appear before this committee and other congressional committees to represent the Solar Bank and respond to issues of concern to the Congress?

Dr. FRANCIS. I will.

The CHAIRMAN. Dr. Francis, your informational statement has been submitted to the committee, but it is required that this statement be made public unless the committee decides special circumstances justify an exception. Do you have any objection to the publication of your information statement?

Dr. FRANCIS. I do not.

The CHAIRMAN. Are you aware of any personal holdings, investments or interests that could constitute a conflict of interest or create the appearance of such a conflict of interest should you be confirmed and assume the office to which you have been nominated?

Dr. FRANCIS. I am not aware.

The CHAIRMAN. Are you involved in or do you have any assets held in blind trusts?

Dr. FRANCIS. No; I do not.

The CHAIRMAN. Dr. Francis, you may proceed in whatever manner you prefer. If you desire, we will place your entire statement in the record.

STATEMENT OF DR. RICHARD H. FRANCIS, NOMINEE, TO BE PRESIDENT, SOLAR ENERGY AND ENERGY CONSERVATION BANK

Dr. FRANCIS. I would like to read a very brief statement, Senator, if I may.

The CHAIRMAN. You may proceed.

Dr. FRANCIS. Mr. Chairman and members of the committee, I am pleased to appear before you today to discuss my nomination to be President of the Solar Energy and Energy Conservation Bank.

I have been serving as the chief operating officer of the Bank since June 1982. I have been actively engaged in all efforts related to expediting program development as well as running the day-to-day operations of the Bank. I believe it would be useful to cover briefly the manner and rationale by which this has been accomplished.

The Energy Security Act of 1980 which established the Bank is very broad in scope and provides for a great variety of uses for the funds. Both matching grants and subsidized loans are authorized for residential, commercial, agricultural and multifamily buildings to undertake energy conservation and solar energy measures. Low- and moderate-income persons are the primary focus of the Bank's program.

Preliminary moves were made to establish the Bank during the final months of the Carter administration. At the beginning of President Reagan's term, the administration assessed the situation and came to the conclusion that the Bank was unnecessary and the funds appropriated to the Bank could better be spent in other ways.

Therefore, the President requested a rescission of fiscal year 1981 funds, which was granted by the Congress. In addition, the multi-billion dollar authorization was reduced to $50 million per year in the Omnibus Budget Reconciliation Act of 1981. A $25 million appropriation was provided for fiscal year 1982 and again the administration requested rescission of appropriated funds.

When the Congress did not agree to this rescission, HUD moved ahead with the implementation of the program.

This department is fully committed to a good faith effort to implement the will of Congress within the current scope of the Bank's program. As I pointed out, Congress greatly reduced the Bank's authorization in the Omnibus Reconciliation Act. Based on this significantly reduced funding, we decided to target the Bank's activities to those most in need of assistance by focusing primarily on retrofitting low and moderate income residential dwellings with cost effective energy conservation and passive solar measures.

From among the options provided by the statute, we decided the most effective and expeditious means to deliver assistance to this targeted group was through State energy conservation and solar energy programs. Taking advantage of the many existing energy related activities at the State and local levels, we opted to deliver assistance by integrating the Bank's program into these efforts.

By minimizing overhead costs, the maximum amount of Federal dollars would be made available to the most needy, in keeping with the targeting priorities of this administration. Equally important, we wanted to stimulate the States and local communities to become more active in developing self-sustaining programs best suited in each case to their particular needs.

In August 1982, therefore, a notice of funding availability was issued, inviting States to submit proposals for utilization of Solar Bank funds. We received proposals from 48 States, the District of Columbia, and 4 territories. An evaluation panel carefully reviewed and ranked each proposal. It selected the most cost-effective proposals and recommended a reasonable funding level for each.

On the basis of a report from the evaluation panel, the Board of Directors of the Bank was presented with a series of possible funding options. At a meeting of the Board on January 17, 1983, actions were taken to provide funding for 48 States, 2 territories, and the District of Columbia.

Interim regulations were published last May and cooperative agreements establishing a legal framework within which the program functions have been entered into by 45 States, the District of Columbia, Puerto Rico, and the Northern Mariana Islands. A final rule based on comments received during the public comment period and directives contained in the Housing and Urban-Rural Recovery Act of 1983 has been approved by the Board of Directors at its meeting on January 10 of this year.

The final rule broadens the universe of potential applicants and allows greater flexibility in the ways participants operate their programs and in the kinds of activities eligible for assistance.

As President of the Bank, my principal responsibility will be to implement the law; to effectively operate the Bank's programs in accordance with congressional mandate. This will be a continuation of my work as manager of the Bank. I believe the record of the past year and a half, appended to this testimony, shows that this is being done and that we are fulfilling our responsibilities under the law.

We have started virtually from ground zero because of the earlier rescission and have succeeded in creating a functioning, productive organization. We have developed a sound and effective approach to employing the Bank's funds to achieve the objectives of the 1980 act within the scope of the present authorization and appropriation.

Now that the Bank has been set up and is operating smoothly, I am confident of my ability to make the most effective use of available funds to achieve the basic objective of reducing the Nation's dependence on foreign energy sources.

Thank you, Mr. Chairman. I will be very happy to answer any questions you may have.

[The prepared statement of Dr. Francis follows:]

37-266 O—84——2

STATEMENT OF RICHARD H. FRANCIS
before the
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
February 23, 1984

Mr. Chairman and Members of the Committee, I am pleased to appear before you today to discuss my nomination to be President of the Solar Energy and Energy Conservation Bank.

I have been serving as the chief operating officer of the Bank since June 1982, first as Comptroller, then as Manager. I have been actively engaged in all efforts related to expediting program development as well as running the day-to-day operations of the Bank. I believe it would be useful to cover briefly the manner and rationale by which this has been accomplished.

The Energy Security Act of 1980 which established the Bank is very broad in scope and provides for a great variety of uses for the funds. Both matching grants and subsidized loans are authorized for residential, commercial, agricultural, and multifamily buildings to undertake energy conservation and solar energy measures. Low- and moderate-income persons are the primary focus of the Bank's program.

Preliminary moves were made to establish the Bank during the final months of the Carter Administration. At the beginning of President Reagan's term, the Administration assessed the situation and came to the conclusion that the Bank was unnecessary and the funds appropriated to the Bank could be better spent in other ways. Therefore, the President requested a rescission of FY 1981 funds, which was granted by Congress. In addition, the multibillion dollar authorization was reduced to $50 million per year in the Omnibus Budget Reconciliation Act of 1981. $25 million was provided for FY 1982 and again the Administration requested rescission of appropriated funds. When the Congress did not agree to this rescission, HUD moved ahead with the implementation of the program.

The Department is fully committed to a good faith effort to implement the will of Congress within the current scope of the Bank's program. As I pointed out, Congress greatly reduced the Bank's authorization in the Omnibus Reconciliation Act. Based on this significantly reduced funding, we decided to target the Bank's activities to those most in need of assistance by focusing primarily on retrofitting low- and moderate-income residential dwellings with cost-effective energy conservation and passive solar measures.

From among the options provided by the statute, we decided the most effective and expeditious means to deliver assistance to this targeted group was through state energy conservation and solar energy programs. Taking advantage of the many existing energy-related activities at the state and local levels, we opted to deliver assistance by integrating the Bank's program into these efforts. By minimizing overhead costs, the maximum amount of Federal dollars would be made available to the most needy, in keeping with the targeting priorities of this Administration. Equally important, we wanted to stimulate the states and local communities to become more active in developing self-sustaining programs best suited in each case to their particular needs.

In August 1982, therefore, a Notice of Funding Availability was issued, inviting states to submit proposals for utilization of Solar Bank funds. We received proposals from 48 states, the District of Columbia, and four territories. An evaluation panel carefully reviewed and ranked each proposal. It selected the most cost-effective proposals and recommended a reasonable funding level for each. On the basis of a report from the evaluation panel, the Board of Directors was presented with a series of possible funding options. At a meeting of the Board on January 17, 1983, actions were taken to provide funding for 48 states, two territories, and the District of Columbia.

Interim regulations were published last May and cooperative agreements establishing a legal framework within which the program functions have been entered into with 45 states, the District of Columbia, Puerto Rico, and the Northern Mariana Islands. A Final Rule based on comments received during the public comment period and directives contained in the Housing and Urban-Rural Recovery Act of 1983 has been approved by the Board of Directors at its meeting of January 10, 1984. The Final Rule broadens the universe of potential applicants and allows greater flexibility in the ways participants operate their programs and in the kinds of activities eligible for assistance.

As President of the Bank, my principal responsibility will be to implement the law; to effectively operate the Bank's program in accordance with Congressional mandate. This will be a continuation of my work as Manager of the Bank. I believe the record of the past year and a half, appended to this testimony, shows that this is being done and that we are fulfilling our responsibilities under the law. We have started virtually from ground zero because of the earlier rescission and have succeeded in creating a functioning, productive organization. We have developed a sound and effective approach to employing the Bank's funds to achieve the objectives of the 1980 Act within the scope of the present authorization and appropriation.

Now that the Bank has been set up and is operating smoothly, I am confident of my ability to help make the most effective use of available funds to achieve the Act's basic objective of reducing the Nation's dependence on foreign energy sources.

Thank you. I will be glad to answer any questions you may have.

MAJOR ACCOMPLISHMENTS OF THE SOLAR BANK UNDER RICHARD H. FRANCIS

A. STAFFING

1. Assembled staff to manage day-to-day affairs of the Bank as of 6/82.

B. REGULATIONS

1. Completed assessment of environmental impact of interim regs on 11/16/82.

2. Prepared interim regs and submitted to Congress on 11/30/82.

3. Revised interim regs and resubmitted to Congress on 4/12/83.

4. Published interim regulations in the Federal Register on 5/31/83.

5. Prepared Final Rule encompassing comments received and directives contained in the Housing and Urban-Rural Recovery Act of 1983 on 1/10/84.

C. PROGRAM IMPLEMENTATION

1. Prepared and recommended action and preliminary program plans and presented these to the Board of Directors in a meeting on 7/29/82.

2. Published a Notice of Funding Availability in the Federal Register on 8/27/82 pursuant to recommendations made to and adopted by the Board of Directors at the 7/29/82 meeting.

3. Requested comments on the NOFA from Advisory Committee members.

4. Developed an evaluation plan for determining acceptability of proposals received from states.

5. Organized five meetings of the Board of Directors consisting of the Secretary of HUD, as Chairperson, and members from Agriculture, Commerce, Treasury, and Energy.

6. Evaluated proposals from 48 states, five territories, and submitted a summary report and recommendations to the Board of Directors on 12/10/82 for a 12/17/82 meeting.

7. Funded 45 states, two territories, and the District of Columbia on 1/17/83.

8. Obligated $30.085M by cooperative agreements with program participants by 9/30/83.

9. Initiated process of Treasury Financial Communications System funds transfer for use with all participants.

10. Arranged for appointment/reappointment of advisory committee members to replace those with terms expiring.

11. Developed a funding formula to be used in the obligation of FY83/84 funds to program participants.

12. Submitted Annual Reports to the Congress for FY81, 82, and 83.

DR. RICHARD H. FRANCIS
PRESIDENT-DESIGNATE
SOLAR ENERGY AND ENERGY CONSERVATION BANK
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Since June 1982, Richard Francis has been responsible for administering the Solar Energy and Energy Conservation Bank. He establishes policies, priorities, and program concepts which facilitate implementation of the Bank according to the statute and under the direction of the Bank's Board of Directors.

Dr. Francis joined the government in 1981 to serve as Senior Policy Advisor to the Assistant Secretary for Policy Development and Research, Department of Housing and Urban Development. Since that time he has been involved in a wide variety of complex special assignments concerning matters of policy requiring a close, personal, and confidential relationship with the Assistant Secretary. He was responsible for developing and implementing new policies and programs, projects, and strategies on housing matters which have a national impact.

Prior to entering government service, Dr. Francis was Executive Vice President of the National Multi Housing Council and was directly involved in a wide range of housing issues from 1978 - 1981. He represented the council's positions on various housing policies and had extensive contact with all levels of government and the private sector. In addition, he has addressed numerous public forums, appeared on radio and television, and had many contacts with the print media on housing issues.

Earlier, as Director of Government Relations for the National Association of Independent Colleges and Universities, Associate Director for Federal Relations of the Association of American Colleges, and Executive Director of the Maryland Independent College and University Association, Dr. Francis was engaged first hand in developing public policy on a broad range of higher education issues. In addition, during the latter portion of his military service as a member of the staff of the Organization of the Joint Chiefs of Staff and as Assistant Naval Attache at the U.S. Embassy in Madrid, Spain, he participated in the preparation and exposition of public policy on national and international affairs.

The CHAIRMAN. Thank you very much.

Senator Evans.

Senator EVANS. Are you ready at this time for questions?

The CHAIRMAN. Yes.

Senator EVANS. Dr. Francis, with the decision early on by the Reagan administration to not move ahead, can you give me something of the rationale for that? In your statement you said, I believe, that the funds are unnecessary and it would be better to use it elsewhere. What was that based upon?

Dr. FRANCIS. I was, of course, not involved with the Bank at that time, but it is my understanding, Senator, that the administration in conjunction with the Congress was attempting to find ways to streamline programs and reduce the level of expenditures by the Federal Government and, therefore, it looked at all of the various programs in the various departments, Energy and Health and Human Services, with an effort toward reducing the overall program duplication and attempted to streamline program activities.

This is the reason why it thought that the funds for the Solar Bank could be better expended in these other programs.

Senator EVANS. Could you give me a better background as to the potential breadth of the Bank. You are putting out money not only for direct solar but also for energy conservation programs. Can they be energy conservation programs of a broad type? Do they have to be solar oriented? Could you give me a little background?

Dr. FRANCIS. The statute provides for a great variety of potential assistance, Senator, in all forms of energy conservation, weatherization, insulation, retrofitting of heating units, replacing air-conditioning units and so on, so that we can provide a very broad variety of energy conservation measures. In addition, the statute authorizes assistance to retrofit homes for solar energy also.

Senator EVANS. With that kind of breadth, it is my understanding that for the last couple of fiscal years, you have only released some three-quarters of appropriated money and it is also my further understanding that for fiscal year 1984 your intent is not to release all of the money appropriated.

With the breadth of those programs, can you tell me if that is true why it is true?

Dr. FRANCIS. No, sir, it is not exactly accurate. We, of course had fiscal year 1982 funds available to us in June of 1982 and this is a 2-year appropriation. So they were available through the end of fiscal year 1983. We were given the fiscal year 1982 funds and all of the fiscal year 1983 funds apportioned on a quarterly basis by the Office of Management and Budget.

At the time the original allocations were made in January 1983, the Bank had available to it $30 million and we allocated all of those $30 million to the States in January 1983. We now have available the remaining fiscal year 1983 funds of $11 million and $25 million of fiscal year 1984, which will be allocated this year on the basis of a quarterly apportionment by OMB. So we are not planning to reserve any of those funds. We are providing them to the States when they are available to us.

Senator EVANS. The programs that you have put out to the States are generally, as I view from this brief description, are mostly loan subsidies or matching grant programs for conservation

measures. To what degree are you trying to direct those programs? Are they purely programs that have been selected by the States themselves? How much cohesion is there and how much uniformity or do you believe there should be any uniformity?

Dr. FRANCIS. Within the overall concept the statute provides, we issued a notice of funding availability in the summer of 1982 offering the States an opportunity to submit a proposal to us in which they would integrate the funds available to us within programs that they had at the State level that most suited their unique needs.

Therefore, each State and territory submitted to us a proposal to do just that. We evaluated all of those proposals and except for two territories that were just completely unacceptable for program reasons, we accepted proposals from 48 States, 2 territories, and the District of Columbia. Each one of these States and territories and the District established programs which were in keeping with their own special needs.

Therefore, even though they differ in some facet or other they are all based basically on the Solar Bank statute.

Senator EVANS. Would you say that this has been primarily oriented toward the energy conservation side rather than the direct solar side?

Dr. FRANCIS. When we examined the program in the summer of 1982 and realized that we were dealing with a much reduced level of funding, we felt that the best thing to do would be to try to focus on the most needed aspects of the program, that being energy conservation for low-income and moderate-income persons.

We also found because of some programs that were conducted at HUD that maybe active solar would not be the most effective way of distributing these limited funds. Therefore, we did reduce the program to an energy conservation focus and allowed also for the passive solar energy measures to be included and that is why we focused the program the way we did.

Senator EVANS. Do I understand correctly that on several previous occasions, I am not sure when, you indicated the fundamental opposition to the concept was the Federal program?

Dr. FRANCIS. As I said at the outset of my statement, Senator, that we believe that there are probably more effective ways to deliver these kinds of funds within the overall needs of the Nation and within the needs of the public we are attempting to assist. Therefore, we thought that the Low Income Home Energy Assistance Program was the most effective way of getting the money to the lowest income level and doing the weatherization job that was needed, given limited funding.

Senator EVANS. That would apply on the energy conservation side, how about on the solar side?

Dr. FRANCIS. Again, we have an extensive and substantial tax credit for solar energy. You are probably aware that it is 40 percent of the first $10,000 expended and there are substantial State credit programs, tax credit programs which, I know, in some States can amount to 65 percent total. We felt that this was probably the most effective way of stimulating solar energy activity.

Senator EVANS. The Bank reports to Housing and Urban Development. How often or to what degree do you have an opportunity

to get involved with others in the energy, either the energy supply or energy conservation field to try to get some interagency cohesion on energy funding, energy conservation, where we should spend our money and what kind of energy policy this Nation should be involved with?

Dr. FRANCIS. As you might know, our Board of Directors includes the Secretaries of Energy, Agriculture, Commerce, Treasury, and we do meet frequently on all policy matters. I am in close cooperation with the Undersecretary and Secretary of Energy, have met with both of them. We have discussed common policy concerns and my program director is a person who has come from the Department of Energy, has an extensive background in this area, and we do, of course, examine the literature and do talk with people out in the field.

So we are aware of the needs and we are aware of the concerns nationwide in this area.

Senator EVANS. It seems to me though that that interagency board of directors may well try to coordinate activities as they relate to both solar needs and how they in turn relate to various ways of energy conservation and planning energy conservation. I am talking about the broader picture of where we make our investment and whether we make our investment. I guess I am trying to get at some of the same things you are. Do we even need this kind of agency? Should we be spending our money or should we be spending more money there and less money on the Synthethic Fuels Corporation, that broader kind of thing.

Do you have an opportunity to engage in that development and continuous monitoring of a broad energy policy to the country?

Dr. FRANCIS. Now that we are underway and have a program that is actively in operation, we are planning to have the two advisory committees that are established by the statute meet with us. They represent a broad range of expertise and energy and finance and business and engineering and so on. They are going to meet with us and provide us with guidance as to the future of the Bank and we are planning to have those meetings in the very near future, some time next month or the month after.

Senator EVANS. This still does not get to what I am talking about. Those are all good organizations and fine to have, but, do you know of any way in which this Government takes a look on a continuing basis at the money we are spending, for instance, on this Bank and the money we are spending on the Synthetic Fuels Corporation. Does the Government look at them both and say, are we spending the right amount of money on each?

Are we focusing our energy dollars where they should be focused and are we looking every year to make sure the same policies of last year follow the new year?

Dr. FRANCIS. I am aware that the Department of Energy in its national energy policy has done just this. Of course, this Bank has been in the Department of Housing and Urban Development, but as I mentioned earlier, I have been in close cooperation and coordination with the Department of Energy and we have discussed just these matters and I know that the Office of Management and Budget is also concerned with this as is the White House and the rest of us in this administration. So we are very conscious of the

need to provide some effective way of cross-fertilizing the entire energy needs of this country and we are doing just that.

Senator EVANS. We had the Chairman of the Synthetic Fuels Corporation before us last week and he did not seem to think that he had that opportunity or that he was engaged in any kind of overall energy planning and I am still trying to find that illusive central point where we are really trying to bring all of those things together and I guess I have not found it yet. Maybe you can help me find where it is going on.

Dr. FRANCIS. We are working on it, Senator.

Senator EVANS. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Hecht.

Senator HECHT. I understand I have voted three times for this, Mr. Chairman. Let us make it four and get this on the road.

The CHAIRMAN. Do you have any questions?

Senator HECHT. No, Mr. Chairman.

The CHAIRMAN. Senator Levin, before turning the microphone over to you, let me say you are more than welcome. I think this is your first appearance since your appointment to this committee, and you are very welcome on the committee.

Senator LEVIN. Thank you, Mr. Chairman, for your warm welcome. It is an honor to be on this committee. I have just a few questions of the nominee, basically relating to its position as to whether the Bank ought to exist or not, to follow up Senator Evans' questions.

I understand you feel that if the Bank is funded and if it is in the law you are going to execute, you are willing to execute it if the law so provides that it be in existence. My questions go beyond that. Is it fair to say that you would like to see the Bank go out of existence?

Dr. FRANCIS. It is fair to say I would like to see the Bank funds put into a place where it could tie into other programs of a similar nature. I am certainly in favor of energy conservation. I believe that in the form of assistance to low and moderate income families, there ought to be weatherization assistance. I am not certain that we need three or four programs to do this.

Senator LEVIN. Is it fair to say you would like to see the Bank go out of existence?

Dr. FRANCIS. Yes, sir.

Senator LEVIN. And the funds that presently go into the Bank you would just as soon see spent, as I understand it, in some other program, to go to the same people as presently are served by these funds, for instance, middle-income people, would you serve them?

Dr. FRANCIS. Our evidence has been that these funds have been pretty much going to the low- and moderate-income end of the spectrum. They are available to persons up to 150 percent of median income. I am not sure that is middle income in definition, but that is what the statute calls for with the exception of some solar energy.

Therefore, I would like to see the program continue to provide funds, particularly towards the lower end of the spectrum, families that really have a tough time heating their homes in the winter time and cooling them in the summer and just cannot afford weatherizing their homes.

Senator LEVIN. You say that the other programs are available to people who are at 150 percent of median income?

Dr. FRANCIS. The programs of appropriated funds are available to those in the lower end of that spectrum and there are substantial tax credits, as you probably know, for those above that level. Therefore, I think that it covers the spectrum that we are talking about.

Senator LEVIN. Putting aside the tax credits, because those are only available to the people who have the money to invest to begin with and get the credit, but most Americans are not in that position or a lot of them are not. My question is, Are the other programs other than tax credits available to people who are at 150 percent of the median level, do you know?

Dr. FRANCIS. They are not, 125 percent poverty level.

Senator LEVIN. That is what I understood too. What is that figure at the moment 125 percent poverty level?

Dr. FRANCIS. The dollar amount?

Senator LEVIN. Yes.

Dr. FRANCIS. I do not know, sir.

Senator LEVIN. Do you know approximately?

Dr. FRANCIS. I would only hazard a guess. I just do not know.

Senator LEVIN. What percentage of Americans would be available for loans at 125 percent of poverty level?

Dr. FRANCIS. Well, I suppose they all would be eligible, sir.

Senator LEVIN. What percentage of Americans are at 125 percent of poverty level or below?

Dr. FRANCIS. I do not know the answer to that question either.

Senator LEVIN. Do you know approximately?

Dr. FRANCIS. No; I do not. I would imagine it is a substantial number of people.

Senator LEVIN. Would it be fair to say that this Bank does serve middle-income Americans and lower middle-income Americans not just lower income Americans?

Dr. FRANCIS. It serves from the standpoint of how it is being directed at the States pretty much the lower and moderate-income end of the spectrum.

Senator LEVIN. It does serve more people than some of the other programs in which you would put this? When I say more, a wider eligibility.

Dr. FRANCIS. A wider eligibility, that is correct.

Senator LEVIN. It permits a higher income family to get a loan than these other programs would permit?

Dr. FRANCIS. The other programs are mainly grant programs; whereas this is a loan subsidy. Actually it is a program to subsidize interest rates.

Senator LEVIN. I understand, without getting into the details of the program, middle-income people would be eligible for this program that might not be eligible for the other programs.

Dr. FRANCIS. That is correct.

Senator LEVIN. Do you believe those middle-income people should be served by the other programs?

Dr. FRANCIS. No; I do not. I believe that the programs ought to be directed, given the limited funds that we have available toward those who can least afford it.

Senator LEVIN. Would you recommend that funds be made available so middle-income people could obtain the benefits of these programs?

Dr. FRANCIS. I would say given unlimited funds, I suppose that would be a worthy objective, but I think given that we have serious budgetary problems that it probably ought to be directed to the low end of the spectrum.

Senator LEVIN. Offhand you cannot tell us what percentage of Americans is available for those other programs?

Dr. FRANCIS. No; I cannot.

Senate LEVIN. What was the budget request for this Bank for 1985?

Dr. FRANCIS. Zero.

Senator LEVIN. Was that also your recommendation?

Dr. FRANCIS. That was the administration's recommendation.

Senator LEVIN. What was your recommendation to the administration?

Dr. FRANCIS. Zero funding.

Senator LEVIN. Was that also the recommendation for 1984?

Dr. FRANCIS. That is correct.

Senator LEVIN. Is it your personal view that this Bank as a bank should go out of existence as well as the administration's view or are you here representing the administration's views exclusively?

Dr. FRANCIS. I am here to represent the administration's point of view. I personally believe that there are an awful lot of things that could be done within the Government that could streamline the Government and make it more effective.

Senator LEVIN. Can we ask you your personal view on this Bank? Is it also your personal view that this Bank go out of existence?

Dr. FRANCIS. Yes; it is.

Senator LEVIN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. It has been suggested that the $11 million that was unobligated earlier was to be reprogrammed, is that correct, that the administration asked that that money be reprogrammed?

Dr. FRANCIS. It did in the fiscal year 1984 budget request, but it has not in the 1985.

The CHAIRMAN. It is your expectation that all funds available will be used for the purpose for which they were passed?

Dr. FRANCIS. It is.

The CHAIRMAN. To the best of your knowledge, is it the administration's position that the moneys should be expended?

Dr. FRANCIS. It is my understanding that all of the funds will be expended on the program area.

The CHAIRMAN. To the extent of carryover funds in the new budget?

Dr. FRANCIS. All funds available to us will be spent that way.

The CHAIRMAN. Dr. Francis, you were in the Department of Housing and Urban Development before going to the Bank, and I think the record indicates you were there for about a year. Is that correct?

Dr. FRANCIS. That is correct.

The CHAIRMAN. During that period of time was there any discussion in the Department of Housing and Urban Development about

the means by which active or passive solar could be included in a program for loan purposes under the standard governmental loan program for housing?

Dr. FRANCIS. I was not involved in that area at that time, Senator, and I have no personal knowledge of that.

The CHAIRMAN. You were—I forgot the exact title.

Dr. FRANCIS. I was Senior Policy Adviser for the Assistant Secretary for Policy Development and Research.

The CHAIRMAN. There was no discussion in policy development within HUD about the use of active or passive solar in the Federal housing programs?

Dr. FRANCIS. There may have been. I was not privy to those discussions and therefore I cannot report on them.

The CHAIRMAN. That is a little disappointing to me, not from your personal involvement, but from HUD's involvement. I have been trying for at least 4 or 5 years to get HUD to recognize that some active solar requires capital investment, and some passive solar may increase the cost of construction, but that cost is a valid and worthwhile expenditure.

Would you agree that there is cost-effective solar construction?

Dr. FRANCIS. From my knowledge and reading the literature and the studies that I have read, there are areas in which both active and passive solar could be cost effective.

The CHAIRMAN. Would it be your judgment that if indeed it is cost effective, it ought to be recognized by the Federal lending policies in their housing programs?

Dr. FRANCIS. I would prefer not to respond to that, because I am just not in a position to make that judgment.

The CHAIRMAN. Let me ask you again, is it a worthy goal of Government—is active or passive solar worthy of recognition if it is cost effective?

Dr. FRANCIS. I am sure it is and I think that the tax credits have done just that.

The CHAIRMAN. If, as a matter of fact, it is cost effective it still might require additional capital investment up front. Is that not correct?

Dr. FRANCIS. Yes, of course.

The CHAIRMAN. Even though it is cost effective, it will still require capital outlays at the beginning?

Dr. FRANCIS. As an industry, if I understand you correctly, yes, I believe it probably would.

The CHAIRMAN. If we have, as we do have, Federal housing programs in which the Federal Government makes or guarantees loans through the several housing programs in existence, would it be helpful if the Government recognized the greater capital cost of active or passive solar?

Dr. FRANCIS. I just do not feel comfortable in responding to that question, because I do not have the full information at my hands.

The CHAIRMAN. Let me ask you this question then. Make an assumption, for the purpose of the question, that active or passive would require greater capital investment at some places in some events. If the Federal Government in the appraisals for loans or guaranteed loans under Federal housing programs does not include that greater expense in their appraisal, then it would mean that

the buyer of the house would have to have additional capital up front, would it not?

Dr. FRANCIS. We are speculating in a lot of areas that would require, I think, a very close examination. Of course, it is my understanding that investment in solar increases the appraised value of a home and would probably provide a basis upon which the loan for the home could be increased. So I suppose it might be a trade-off in that respect.

The CHAIRMAN. You say you are assuming that there is a greater appraisal value?

Dr. FRANCIS. I understand that that has been the case. I do not know, having never done it personally, but from what I have read there is an increase in the value of the home if there is solar. I suppose from the aesthetic point of view it would depend on how that traded off. As I say, there are an awful lot of factors involved here, Mr. Chairman, that I just do not know enough about to give you a good judgment.

The CHAIRMAN. You say you assume from what you have read that it results in a greater appraised value.

Dr. FRANCIS. It could.

The CHAIRMAN. It could. If as a matter of fact it did not show up as an increase in appraised value, would you think that it should be something the Government should consider in putting into appraised value calculations?

Dr. FRANCIS. I think we are talking about a market operation that probably has to be undertaken by those who are going to lend the money and this is a judgment that I suppose that the lender would have to make.

The CHAIRMAN. Does not the Government make a judgment when they make an appraisal?

Dr. FRANCIS. Well, of course, this is a local government decision, as I understand it.

The CHAIRMAN. What is a local government decision, the appraisal for a loan or a guaranteed loan?

Dr. FRANCIS. I understand for tax purposes that appraisals are done at the local level.

The CHAIRMAN. I am not talking about for tax purposes. I am talking about the lending program.

Dr. FRANCIS. You are getting into an area, Senator, that I am not really comfortable in discussing and I just would not feel comfortable in trying to respond to it.

The CHAIRMAN. I understand your reluctance, but as a matter of fact you do not know anything about it. But it seems to me evident, whether you know something about it or not, that it may have increased capital cost. You would try to have included in appraised value the additional capital cost. Do I understand you to say that is not the Federal Government's business, and you would leave that to the private sector totally?

Dr. FRANCIS. I think I could probably answer it this way and say at this point it is not something that I could speak for the Federal Government on and I would be reluctant to do so without a full understanding of all of the ramifications of what I was saying.

The CHAIRMAN. It does not require a very great expansion in a speculative capacity, does it, to assume if a house costs $50,000 for

1 square footage and it costs $60,000 with active solar, that you are going to have to find an additional $10,000 somewhere?

Dr. FRANCIS. Yes, sir, and I suppose that would be true of almost anything that was added to a home that would add to the cost.

The CHAIRMAN. If as a matter of fact you have to add that to the cost, it either has to be included in the appraisal for loan purposes or it has to be totally financed by the purchaser.

Dr. FRANCIS. That is correct.

The CHAIRMAN. If you are requiring 5 percent down on a loan that is guaranteed by the Federal Government, and you do not include the additional cost occasioned by the solar construction, active or passive, the purchaser has to make a 100-percent downpayment on that additional cost.

Dr. FRANCIS. If that were not done that would be certainly the case.

The CHAIRMAN. That is as a matter of fact and does not require speculation. Is that correct?

Dr. FRANCIS. That is correct.

The CHAIRMAN. If that is a matter of fact, and the Government does not include it in the appraisal, the additional cost of active or passive solar, that would affect the marketability of that house, would it not?

Dr. FRANCIS. I would assume so.

The CHAIRMAN. If the Government were really serious about trying to get solar moving, either passive or active, they would take a look at whether or not it affected the merchantability of those homes?

Dr. FRANCIS. Yes; that would be a good assumption to make.

The CHAIRMAN. If as a matter of fact the Government is not doing it, it would seem that the Government is not very interested in whether solar made it more merchantable?

Dr. FRANCIS. I think it would depend on other factors that might bear upon the problem and I do not know those factors. I would not want to make a judgment on them.

The CHAIRMAN. Let us assume for the moment you are really dedicated to solar, an assumption that other people have challenged. Let us make the assumption for the moment, that you are in charge of a lending program, and you are going to see whether or not you can get more solar out there because you think it is a good thing to do.

Would you then look at the possibility of including that extra cost in the appraisal so it might be financed along with the other costs of the house?

Dr. FRANCIS. That would be one of the factors that would be looked at in determining the overall level of lending for the home.

The CHAIRMAN. And if it is not included in the appraisal, it would have a deterrent effect upon the installation of that construction. Would it not?

Dr. FRANCIS. I would assume so.

The CHAIRMAN. The reason I go to a little bit of length in trying to elicit from you some information with respect to your own views is because a great many people say you are not only disinterested, you are hostile.

Dr. FRANCIS. I think that is probably an unfair statement, Senator. I am not hostile to doing a good job. And I think that the program that we have here, and I am administering, has certain basic purposes. And I have always felt that it is my responsiblity and will continue to feel that it is my responsibility to see that those purposes are met as efficiently and as effectively as I know how.

Whether I believe that there are other ways this could be done or whether I feel that maybe that the program need not exist would never tarnish or affect my ability or willingness to see that the program is run effectively. In my long career, I have always felt it has been my responsibility to provide advice to those for whom I work as to what I think ought to be done.

I think it is incumbent upon anybody to do that. Once the decision has been made to do something a certain way, then I also believe that it is my responsibility to do the job as effectively as possible and that is how I have approached the Solar Bank.

The CHAIRMAN. Let me refer to section 518(a)(2) of the law under which the Bank operates. It says in 518(a) that the Bank shall promote the program established by the subtitle, shall not duplicate any promotion or assistance activities by other agencies, but shall cooperate with those agencies in the development and dissemination of reliable appraisal techniques with respect to residential and commercial improvements in solar energy systems.

You have indicated in your response to earlier questions that you have made a judgment that the limited money that is available should be put into the lower income end of the spectrum, which would indicate a conscious decision on your part not to follow the broad outlines of the act, but to confine your activities to a narrow scope of duties. I think that is fair. Is it not?

Dr. FRANCIS. Yes; it is.

The CHAIRMAN. If that is true, would you include within your responsibilities the dissemination of information with respect to appraisal techniques and development of such information, or would you think that that was less important than the other mandates in the act with respect to lower income or lower income assistance?

Dr. FRANCIS. We felt that promotional—well, let us go back to the beginning. The initial scope of the Bank would have called for a very substantial appropriation and the Bank staff 4 years ago planned to have an elaborate system for disseminating information and for distributing the funds based on an agent that it was going to put into effect.

This would have cost millions of dollars, from my understanding, and would have been a substantial organizational structure. When we looked at the Bank in June 1982 and we saw that we did not have billions to spend, but rather $25 million, the feeling was that we could not establish this agent system without using a large portion of funds available to the Bank.

Therefore, we decided to reduce the scope of the activity and concentrate primarily on energy conservation and focus the activities through the States and to do it in a way that would see that the maximum amount of money went to the end of the spectrum that probably needed the assistance most.

Therefore, that was our focus. We did not attempt to do all of the other things that the act envisioned simply because we did not see,

given the change in the level of authorization that this was really feasible any longer.

The CHAIRMAN. So your answer, if I understand it correctly, is that you would not intend to perform any activities under the promotion section?

Dr. FRANCIS. We did provide to the States funds to promote the programs that they were to operate and this was part of our funds distribution to the States and the States are, of course, doing just that, in addition to the other promotional activities the States have already undertaken to promote their energy conservation and solar activities.

The CHAIRMAN. What would it take from Congress to redirect your emphasis, if Congress decided to redirect your emphasis?

Dr. FRANCIS. It would take a substantial increase in the authorization of it.

The CHAIRMAN. There may be some in Congress who do not agree with the choice of expenditures you made out of the variety of activities that are authorized under the statute. You have chosen to put it all into State programs, as I understand it.

Dr. FRANCIS. That is correct. We do have some which would go through certain cities.

The CHAIRMAN. Do you see any value in section 518?

Dr. FRANCIS. I would think that given a larger scope of operations, it would be valuable, but under the circumstances I think it is beyond the ability of the present Bank as it is constituted to do so.

The CHAIRMAN. Do you think there is any possibility that actions such as promotions would leverage into greater and more efficient expenditures nationally?

Dr. FRANCIS. It is possible and I certainly think that working with you we could certainly look at this area and give it a closer examination and I will do just that.

The CHAIRMAN. I understand the dilemma you have when you have less money than was contemplated at the time when the very broad scope of activities was included in the act. You had to make some choices. All I am asking really right now is whether or not you are satisfied with the choice of putting it all through the State and local programs, if it is the most effective expenditure of your limited amount of money. I understand you to say you believe it is, but you are willing to take a look at it.

Dr. FRANCIS. I certainly thought at the time and continue to think that is probably the most effective way of handling it, but given your interest in this area, then we certainly will take a closer look at it.

The CHAIRMAN. We know that the Federal Government does not provide financing for all of the housing in the United States and we do not contemplate that we will. We do believe, however, that in terms of the money that is put in through the housing programs, whether it be through HUD, Farmers Home Administration, or the senior citizens programs that come under various categories, housing assistance affects the market in very significant ways. The approval or disapproval of something for Veterans' Administration housing is an example that will leverage those policy choices into a different place in the market choices.

37-266 O—84——4

It seems to me there may be an opportunity here for the Bank to utilize some of its limited funds in a way that may affect the market more than the direct expenditure of those funds, and I would invite your attention to that.

Dr. FRANCIS. We will do that and take a look at it right away.

The CHAIRMAN. Senator Evans, do you have any further questions?

Senator EVANS. I would like to follow up on the chairman's line of questioning. He asked, in fact, if you are hostile to some of the act and its goals, but in listening to your responses I am more concerned about the fact that you appear not to be knowledgeable about some fairly fundamental ideas and concepts that it seems to me that the president of such a bank ought to be familiar with.

You had a fairly difficult time and I am not sure he ever did get from you an adequate explanation of whether you felt that the initial investment in solar or for that matter energy conservation in a new home ought to be included in the appraisal for that home and ought to be part of the lending and whether you endorsed that concept.

I got the impression that you did not know very much about that.

Dr. FRANCIS. I did not mean to leave that impression at all. What I was trying to say is I do not feel comfortable in speaking for this administration as to its involvement in that at this time. I certainly appreciate that investments in solar in a home would change its cost, and certainly ought to change its valuation and I have no problem with understanding that and appreciating it.

It is the extent to which the Federal Government ought to be involved in the process that I just did not feel comfortable in speaking for, in speaking to.

Senator EVANS. Do you believe personally that, say, a package of energy conservation—let me go back and just tell you of my own involvement in the last 2 years as chairman of the Pacific Northwest Regional Power Council, we created an electric power plan for the next 20 years. We went in with no preconceived notion and we found that there was a very large potential for cost effective energy conservation and it was cheaper, cheaper to gain that electricity, for that matter other fuels as well, the heating fuels, by insulation and energy conservation than by going out and building additional powerplants.

We found that you could clearly create a package that would add to the capital cost of new homes but if you added together the cost of the mortgage and the cost of your energy without the conservation package, it was larger than the added cost of the mortgage for that capital investment and the lower cost of energy. Now, does not that seem to make sense?

Dr. FRANCIS. It makes very good sense and I agree with you fully and I understand the concept and I am aware of all of the ramifications of attempting to reduce the overall power demands to reduce the need for capital investment in power and I fully subscribe to that.

Senator EVANS. Then I do not see why you have difficulty in, if you have difficulty speaking for the administration, because you are not aware of their views on this matter, are you speaking as

forcefully as you just did to the administration in advocating that that is the direction they ought to take?

Dr. FRANCIS. When I have an opportunity to speak to that specific matter, I certainly will. This matter has not come to my attention as President of Solar Bank. It is not within the scope of the activities of the Solar Bank at this time and, therefore, I did not feel comfortable in speaking for the administration in this area.

Senator EVANS. Are you saying it is not within the scope of the activities of the Bank under the statute?

Dr. FRANCIS. The scope of the Bank as it is presently constituted as agreed upon by the Board of Directors. I am only speaking within the scope of activities as they are presently constituted. I understand the statute is much broader. The Board of Directors of the Bank at the time that we evaluated the activities that the Bank should undertake looked at the level of appropriation and looked at the potential for activity, decided that it must reduce its scope and therefore I am speaking within that reduced scope.

I certainly understand what you are saying and I agree in concept, but the Bank as it is presently constituted is not involved directly in this activity. Now, I agree with the chairman that we should look at this and we certainly shall look at it.

Senator EVANS. You said it has not come before the Bank and you have not had an opportunity to deal with it. I have had the opportunity for the last half-dozen years to serve on the board of directors of a different kind of bank, a mutual savings bank, and while the board of directors was, they were the policy setters unquestionably, we certainly did not do it in a vacuum; we had a good deal of initiative from the managers and the employees of the bank. And rather than saying that it had not come to your attention or the Bank's attention, is that not something in your view that you and others in management positions in the Bank ought to have brought to the Board of Directors?

Dr. FRANCIS. At the time that the Board of Directors, in the summer of 1982, looked at what could be done and what resources we had to do it, these were matters, not necessarily specifically, but the broad overall concept that the Bank was to operate under the original statute was evaluated.

But as I said earlier, given the significantly reduced level of appropriations, we felt that it was incumbent upon us to try to spend those limited funds in a very focused way. And that is why we went about it the way we did.

Senator EVANS. And it never occurred to anybody that it might be a good idea and would not take a whole lot of money to say, hey, if we are going to go into a lot of programs in State government, why don't we encourage and tell them that we are enthusiastic about programs that they can devise which would fit precisely in the field of energy conservation and/or solar packages that may add to the initial cost of a home but which would save energy? This would leave the homeowner with less money to pay each month for the utility bills coupled with the mortgage. That does not take a whole lot of Federal money, does it?

Dr. FRANCIS. No; as a matter of fact it probably does not. We just did not get involved in that and there is nothing else I can say. We

tried to focus it in areas that we thought it would do the most good with very limited resources.

Senator EVANS. Do you consider yourself fairly familiar with the statute under which you operate?

Dr. FRANCIS. Yes.

Senator EVANS. How often do you read it?

Dr. FRANCIS. Whenever the occasion comes to deal with it. I have read it over many times.

The CHAIRMAN. Do you have any further questions, Senator Levin?

Senator LEVIN. You indicated the statute is broader than your scope of activities. You have limited your scope of activities because of the narrow funding. Is that correct?

Dr. FRANCIS. Yes.

Senator LEVIN. You are also opposed to any increased funding. Is that right?

Dr. FRANCIS. That is correct.

Senator LEVIN. So you are in the position of telling us that, my gosh, you cannot do all of the things the statute tells you do to because you only have such a small amount of dollars and you wish you had even fewer dollars.

Dr. FRANCIS. I am saying that I have the responsibility to the Congress and to this administration to spend the dollars that we have effectively.

Senator LEVIN. Do you not also have the responsibility to carry out the statute?

Dr. FRANCIS. That is what I am attempting to do, Senator.

Senator LEVIN. If you cannot carry out the statute with the funds you have, is it not your obligation to ask for more funds or ask the Congress to amend the statute, one or the other?

Dr. FRANCIS. The Congress has amended the statute recently.

Senator LEVIN. I am talking about to restrict the statute so it is consistent with your scope of activity. What gives you the authority to pick between the activities the Congress has directed you to do?

Dr. FRANCIS. We looked at the potential for success with the very limited funds that we had and we felt that the things we are doing now would lead to that and that was our judgment at the time.

Senator LEVIN. Is that not a legislative judgment that you are asserting?

Dr. FRANCIS. I do not think so, Senator.

Senator LEVIN. Are you not obligated if you cannot carry out the activity that Congress has directed you to carry out to come back to Congress and say either reduce the activities you have directed me to do or give us more money? Is that not your obligation in carrying out the laws?

Dr. FRANCIS. I felt that the fact that the authorization was reduced from something like $3 billion to $50 million was tantamount to an indication on Congress' part that we were to consider the potential for effectively spending that limited amount of money and that we were to administer the statute in a way which would do that.

Senator LEVIN. That was the authority to pick and choose between the items we had directed you to execute.

Dr. FRANCIS. Given that we could not execute them all, given $50 million, we felt that we would focus on those that would have the most likelihood of success.

Senator LEVIN. Is it not ordinarily better that a person in charge of a program believe in that program?

Dr. FRANCIS. I believe that the program should be run by the person in charge effectively. I think you can be responsible for a program and I think that there are other ways of doing it. I happen to believe in weatherization. I happen to believe in energy conservation very sincerely. And I have been in the last year and a half doing the best I could to see that these moneys were spent that way.

Senator LEVIN. My question is, Would it ordinarily be better if the person in charge of a program believed in the program?

Dr. FRANCIS. Yes; I suppose it would be.

Senator LEVIN. Do you know the head of any other agency or institutions in the Government that requested that his own budget be zero this year?

Dr. FRANCIS. I do not know. I cannot answer that.

Senator LEVIN. I do not mean phased out; I mean zero now.

Dr. FRANCIS. I do not know.

Senator LEVIN. You indicated that you would put whatever money was aside to be authorized to be appropriated into other energy conservation programs such as low-energy assistance programs and DOE low-income weatherization programs. Would you also recommend that we expand the dollars that are put into those programs so more people would be eligible?

Dr. FRANCIS. I would recommend that we put enough money in there to do the job within the scope of the availability of people to respond to that need. I do not know what that need is and I would suggest that it probably would be better to evaluate the need and then provide the funds in response to that need.

Senator LEVIN. You do not know what the overall need is?

Dr. FRANCIS. I do not and I do not know that we know without a very careful examination of the overall energy needs of the country and those are constantly changing.

Senator LEVIN. Are not those two programs identified funded out of the Treasury fund in the 1985 budget request?

Dr. FRANCIS. The Low Income Home Energy Assistance Program is and to the extent that the Department of Energy program will be funded out of funds that are derived from the program of overcharge.

Senator LEVIN. So if we do not adopt that legislation that means there would be no request for the DOE program?

Dr. FRANCIS. I do not know. I would have to let DOE respond to that, Senator.

Senator LEVIN. You are not personally familiar with that?

Dr. FRANCIS. I am not privy to what the Department of Energy would request under those circumstances.

Senator LEVIN. It is important you say you want your Bank to go out of existence, that these needs can be taken care of by other programs. Should you not be aware of whether or not those other programs will be funded and should you not support the programs

from Treasury funds if you are going to rely on them to carry out the functions your Bank is supposed to carry on?

Dr. FRANCIS. Our focus is primarily on, as you know, from our request to transfer under the Low Income Home Energy Assistance Program and that was the program we felt was the most logical area for weatherization to be undertaken.

Senator LEVIN. Do you know whether the tax credits that are in the law now are going to be renewed under the administration's request?

Dr. FRANCIS. I know there is considerable discussion. I do not know what the policy is on that. I do not want to speak to that policy.

Senator LEVIN. Do you know whether or not the administration is going to be requesting an extension of the tax credits that you point to to take care of——

Dr. FRANCIS. I do not know. I do not know, because I do not know that there has been a decision made.

Senator LEVIN. Are you recommending they be continued?

Dr. FRANCIS. I would recommend that they——

Senator LEVIN. Have you recommended?

Dr. FRANCIS. I have not.

Senator LEVIN. If you claim that that is a way of taking care of the problem, should you not have recommended that it be continued?

Dr. FRANCIS. I think this is probably outside of the scope of my responsibility, sir.

Senator LEVIN. Are you sure that the Low Income Home Energy Assistance Program is not also funded out of the oil overcharges?

Dr. FRANCIS. I do not believe so. I do not believe the overcharges would be large enough to do that. It is a $1.8 billion problem and I do not believe the overcharges would cover that.

Senator LEVIN. I am talking about now the proposal for fiscal year 1985 for that program. Do you know whether or not it is funded out of a proposed change in legislation?

Dr. FRANCIS. I do not believe it is.

Senator LEVIN. If it were, would you suggest that that is an awfully speculative way to fund a program which you look to to take the place, to do the job you think your Bank should do?

Dr. FRANCIS. It is my understanding that the level of funding is roughly $1.8 billion. To the extent that that would be paid for by overcharges, I would presume that would be an effective use of overcharge funds.

Senator LEVIN. That is not my question. Doctor, the problem is that you say let's get this Bank out of existence and let other programs do it. My question is about those other programs and one of those other programs is funded out of a trust fund that may never come into existence, because the legislation may never pass that creates the trust fund. My question to you is that is it not also true the other program, the Low Income Home Energy Assistance Program would also be funded in 1985 out of that same speculative trust fund?

Dr. FRANCIS. I did not believe it would.

Senator LEVIN. If it is, do you believe it would be a mistake?

Dr. FRANCIS. I do not think—as I said, I do not believe it is, so I think it would be speculative of me to answer it that way.

Senator LEVIN. Do you think it is important that both of those programs be funded in a solid way and not speculatively?

Dr. FRANCIS. I believe that if the overcharge money is not going to be available they will be funded properly.

Senator LEVIN. And should be?

Dr. FRANCIS. And should be.

Senator LEVIN. If we do not create the trust fund, you think we ought to appropriate the money?

Dr. FRANCIS. I think we ought to appropriate sufficient funds to do the job that the program is designed to do.

Senator LEVIN. The President's budget proposal says we not fund it at all unless a trust fund is created. Do you agree with the budget proposal?

Dr. FRANCIS. It was my understanding, and I could be wrong, I understood that we requested funds for that program.

Senator LEVIN. In the event that the trust fund is not created?

Dr. FRANCIS. That is what I understand.

Senator LEVIN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Senator EVANS. I have two other questions. Do I understand correctly that there are two advisory committees to the Bank?

Dr. FRANCIS. Yes; there are.

Senator EVANS. Have they met?

Dr. FRANCIS. They have not met since 1980.

Senator EVANS. Why not?

Dr. FRANCIS. We have sought their advice on a number of occasions by individual contact, but they have not met personally. We are planning to have them meet within the next month or so.

Senator EVANS. Have you suggested to the Board of Directors at any time during the last few years that they convene and meet on a regular basis?

Dr. FRANCIS. We discussed this at the Board of Directors meeting and it was decided that the best way to deal with the advisory committee was to deal with them individually, since they all represent different facets of the economy and we sought their advice that way.

Senator EVANS. It seems to me there are a number of advisory committees and it is quite common practice in both the private and the public sectors that an advisory committee is made up of representatives of varying sectors probably to enhance or to increase their quality of advice, if their knowledge is tested against those others with different backgrounds. That is the reason to have committees.

I never heard of a committee where all you did was seek individual advice. That is not even a committee.

Dr. FRANCIS. That was a decision of the Board of Directors given the need to expedite the program and it was felt that we could succeed in getting their advice individually and that was the decision that was made.

Senator EVANS. That was a decision of the Board of Directors. Was it a decision you concurred in?

Dr. FRANCIS. I support the Board of Directors decision.

Senator EVANS. Did you suggest to the Board of Directors that it was an inappropriate way to operate?

Dr. FRANCIS. I suggested that we consider meeting with the advisory committees. A decision was made that we could probably seek their advice just as well, and given the expeditious nature of the program startup, that it would be better to seek their advice personally and we would probably get it that way more effectively.

Senator EVANS. Did I understand you to say you did suggest to the Board of Directors that they call the advisory committees into regular sessions?

Dr. FRANCIS. I suggested that we consider various approaches to the advisory committees, one of which was to meet with them directly. The decision was made that given the need to expedite the development of the Bank that we would probably be better off to seek their advice individually by mail.

Senator EVANS. You suggested a variety of ways of doing that. Did you then give the Board of Directors your recommendations to which of those alternatives you thought would be best?

Dr. FRANCIS. I at one point at the outset thought that we might be advised to have them called together, but then we realized that the need to expedite the Bank and that we could probably succeed in doing this by calling them individually and dealing with them individually and therefore I supported that decision.

Senator EVANS. Is not an annual report called for by law?

Dr. FRANCIS. We have issued three annual reports.

Senator EVANS. Would you submit copies of those to the committee?

Dr. FRANCIS. I believe you have already received them, but I will be glad to do it again.

Senator EVANS. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Tsongas has certain questions to be asked for the record and they will be submitted to you for response in writing. Senator Metzenbaum has indicated he also has questions for response in writing. Those questions will be received from Senator Metzenbaum and any other member of the committee by the close of business today for response for the record.

Dr. Francis, thank you very much for your attendance and attention to the questions, and I hope you will respond to the questions in writing.

Dr. FRANCIS. I will do it expeditiously.

The CHAIRMAN. Thank you very much.

Our next witness is Margaret Morgan-Hubbard, a member of the board of directors, Solar Lobby. I understand she is not able to be here today and Joan Moody is in attendance and will testify.

STATEMENT OF MARGARET MORGAN-HUBBARD, BOARD OF DIRECTORS, SOLAR LOBBY, AS PRESENTED BY JOAN MOODY, PUBLIC RELATIONS ASSISTANT, SOLAR LOBBY

Ms. MOODY. Yes, thank you, Mr. Chairman. Margaret Morgan-Hubbard sends her regrets that she is not able to be here. Her infant is very ill.

I would like to present the statement and I would be glad to answer any questions I can. If there are additional questions, we will be glad to submit them by the end of the day.

The CHAIRMAN. The statement is a joint statement. You may proceed.

Ms. MOODY. Thank you. Mr. Chairman, the Solar Lobby, this Nation's largest renewable energy consumer organization, must strongly protest the nomination of Richard Francis as the new President of the Solar Energy and Energy Conservation Bank. Our fundamental reason for opposing this nomination is that Dick Francis has opposed the program that he has been nominated to run.

Mr. Chairman, Mr. Francis has just admitted that he would like to put the Bank out of existence and he has recommended zero funding for the Bank in fiscal year 1985. I know that you support a balanced energy program and it seems obvious to us that a person who wants to eliminate the program that he is supposed to head does not share the same goals.

As the Bank's original comptroller, its manager, and as the current Presidential nominee to become President of the Bank, Mr. Francis has vocally supported and led attempts to emasculate the Bank. He has actively stonewalled the will of Congress and the Federal courts in having this program carried out in an expeditious manner. He has delayed implementation of regulations and approved State plans to allocate the Bank moneys in a manner contrary to the law.

For example, I understand that some States have used funds for secondary mortgage markets and not all of these funds are going to subsidize interest on loans. Some of them are going to the State.

In fact, Mr. Francis has described the Solar Energy and Energy Conservation Bank as costly and unnecessary. His statement today shows that he clearly has no desire to carry out the program as it was conceived and will acquiesce to follow the law only if Congress lays out its mandate in a specific manner.

Mr. Chairman, the Solar Lobby firmly maintains that the Solar Energy and Energy Conservation Bank is not only necessary but fiscally prudent. The Bank is a unique program to encourage the use of renewable energy, solar and conservation, through the private sector. Federal incentives that use small amounts of public moneys to leverage large amounts of private moneys must be encouraged in order to promote actions that increase this Nation's security. Obviously, solar energy and conservation are necessary to decrease our energy dependence and secure our future.

The Solar Bank was designed to meet the needs of the middle class by cutting their energy bills at a time when utility costs are skyrocketing. This question was raised earlier with Mr. Francis and I would like to underscore the fact that we have Federal programs to help people at 125 percent of poverty level and below to weatherize their homes and we have the residential tax credits for those of the upper income levels. But most Americans need assistance in some other way.

There are a lot of middle-income people that would be left out in the cold without this program. There are many families and elderly persons who do not qualify for public assistance who cannot use the tax credits and are very much in need of help with their bills. A recent Washington Post poll showed that energy prices are a top concern among the public.

By providing a program that uses financial institutions as the main vehicle to promote energy conservation and solar applications coupled with a Federal interest subsidy to make these loans more affordable, the Bank is the most effective way to reach this middle income and working, poor population. It is a conceptually sound Federal program.

The attachments to this testimony which I would like to have submitted into the record show in detail how the Solar Bank fills a glaring gap in the market.

Mr. Francis, however, has a poor record of managing this conceptually sound program. Attached to this statement is a copy of testimony of the Solar Lobby on fiscal year 1984 appropriations for the Solar Bank. This testimony provides a detailed history of how the Bank has been intentionally mismanaged, if not willfully subverted, over the past several years. Some States even returned their allocations because of the misguided regulations crafted by Bank personnel. And we do have letters on file from those States, if anyone is interested in them.

The good news about the Bank is that a Federal court directive has forced the administration to release its funds, $30 million of the $41 million that was originally appropriated for the Bank has been released. Our understanding is that the Bank directors have also agreed to distribute $7 million of the $25 million appropriated in fiscal year 1984 along with $11 million remaining from previous appropriations that they unsuccessfully tried to reprogram.

It has been our understanding that the administration may try again to reprogram the $18 million of yet unobligated moneys. Obviously, however, this pattern of withholding money then releasing the funding in part, then attempting to transfer the unobligated funds to other programs shows a clear lack of commitment to carry out the Bank's mandate, as well as misleading actions that we can only believe are attempts to shut down the program.

Mr. Francis is responsible for time overruns that are exacting a heavy toll on citizens in the form of their own energy costs. Back in June of 1982 when the Solar Lobby went to court in the case of *Dabney* v. *Reagan* to stop impoundment of funds for the Solar Bank, attorneys for HUD promised the court on the record that within 3 to 4 months the Bank would get funds to individual recipients.

Twenty months later, funds are finally getting to the States and the majority of these funds have not yet reached the recipients. Richard Francis was responsible for expediting this process. We do not believe that a 500-percent time overrun is the sign of an expedient manager.

Irregardless of what he recommended for funding, he was responsible for the regulations and he was responsible for approval of State plans. And both of those have not been done.

This past November Congress approved legislation that would extend the Bank's authorization for 2 more years and corrected aberrations in the regulations released under Mr. Francis' direction that had prohibited funding of active solar or the use of tax-exempt financing by the States to leverage additional moneys for the Bank's activities.

I should add that with more than a million active solar systems available today, in the world today operating, we could hardly say that active solar is in the category that Mr. Francis placed it. Furthermore, I feel that the way the Solar Bank works, it should be up to the local bank to determine the cost effectiveness of a system that an individual may want to install in a particular home. This is not something that the Federal Government can dictate for each individual case.

We appreciate the continued support of the Congress for the Bank and firmly believe that it should be headed by someone who has a strong desire to make the program work. Mr. Francis clearly has no such desire and his managerial record does not warrant a promotion at this time. The Solar Lobby strongly opposes the nomination of Richard Francis until oversight hearings are held on Bank activities, regulations, and management.

Mr. Chairman, we would be glad to meet with you as well as individuals from other associations and attorneys who represent the Solar Bank on that. The American people deserve a real commitment to the Solar Bank. It is obvious to us from hearing Mr. Francis' statement today that he cannot provide that commitment and, furthermore, I would think that if Congress were by some quirk to go into recess for a year, Mr. Francis would destroy the Solar Bank.

Thank you very much.

[The prepared statement of Ms. Morgan-Hubbard follows:]

PREPARED STATEMENT OF MARGARET MORGAN-HUBBARD

The Solar Lobby, this nation's largest renewable energy consumer organization, must strongly protest the nomination of Richard Francis as the new President of the Solar Energy and Energy Conservation Bank. Our fundamental reason for opposing this nomination is that Dick Francis has opposed the program that he has been nominated to run.

As the bank's original comptroller, its manager, and as the current Presidential nominee to become President of the bank, Mr. Francis has vocally supported and led attempts to emasculate the bank. He has actively stonewalled the will of Congress and the federal courts in having this program carried out in an expeditious manner, and approved state plans to allocate the Bank monies in a manner contrary to the law.

In fact, he has described the Solar Energy and Energy Conservation Bank as "costly and unnecessary." (See attached article.) More recently, his November 10, 1983, statement and comments before the Senate Banking Committee indicate that he clearly has no desire to carry out the program as it was conceived and will acquiesce to follow the law only if Congress lays out his mandate in a specific manner.

Mr. Chairman, the Solar Lobby firmly maintains that the Solar Energy & Energy Conservation Bank is not only necessary, but fiscally prudent. The bank is a unique program to encourage the use of renewable energy--solar and conservation--through the private sector. Federal incentives that use small amounts of public monies to leverage large amounts of private monies must be encouraged in order to promote

actions that increase this nation's security. Solar energy and conservation obviously must be encouraged in order to decrease our energy dependence and secure our future.

The Solar Energy and Energy Conservation Bank was designed to meet the needs of the middle class by cutting their energy bills at a time when utility costs are skyrocketing. We have federal programs to help people at 125-percent of poverty level and below to weatherize their homes, and we have residential tax credits for energy conservation and renewables for those of the upper-income levels. But most Americans need assistance in some other way. By providing a program that uses financial institutions as the main vehicle to promote energy conservation and solar applications coupled with a federal interest subsidy to make these loans more affordable, the Solar Lobby believes that the Bank is the most effective way to reach this population. It is a conceptually sound federal program.

Mr. Francis, however, has a poor record of managing it. Attached to this statement is a copy of testimony of the Solar Lobby on Fiscal Year 1984 appropriations for the Solar Bank. This testimony provides a detailed history of how the Bank has been intentionally mismanaged, if not willfully subverted, over the past several years. Some states even returned their allocations because of the misguided regulations crafted by Bank personnel.

The good news about the Bank is that a federal court directive has forced the Administration to release its funds--$30 million of the $41 million that was originally appropriated for the Bank has been released. Our understanding is that the Bank directors have also agreed to distribute $7 million of the $25 million appropriated in FY '84 along with $11 million remaining from previous appropriations

that they unsuccessfully tried to reprogram. We understand that the Administration may try again to reprogram $18 million of yet unobligated monies. Obviously, this pattern of withholding monies, then releasing the funding in part, then attempting to transfer the unobligated funds to other programs shows a clear lack of commitment to carry out the Bank's mandate--as well as misleading actions that we can only believe are attempts to shut down the program.

Mr. Francis is responsible for time overruns that are exacting a heavy toll on citizens in the form of their energy costs. Back in June of 1982, when the Solar Lobby went to court (Dabney vs. Reagan) to stop impoundment of funds for the Solar Bank, attorneys for HUD promised the court on the record that within three to four months the Bank would get funds to individual recipients. Twenty months later, funds are finally getting to the states and the majority of these funds have not yet reached recipients. Richard Francis was responsible for expediting this process; we do not believe that a 500% time overrun is the sign of an expedient manager.

This past November Congress approved legislation that would extend the Bank's authorization for two more years and corrected aberrations in the regulations released under Mr. Francis' direction that had prohibited funding of active solar, or the use of tax-exempt financing by the states to leverage additional monies for the Bank's activities.

We appreciate the continued support of the Congress for the Bank and firmly believe that it should be headed by someone who has a strong desire to make the program work. Mr. Francis clearly has no such desire and his managerial record does not warrant a promotion at this time. The Solar Lobby strongly opposes the nomination of Richard Francis until oversight hearings are held on Bank activities, regulations, and management. The American people deserve a real commitment to the Solar Energy and Energy Conservation Bank; Mr. Francis' actions, as described in the attached statement submitted for the record, indicate that he cannot provide this commitment.

Policy change won't guarantee tax credit extension

From Page One

As of mid-September, the update on tax credit legislation was as follows: none of the three credit bill alternatives were receiving much attention. "Congress is reluctant to take up any revenue losing bill this year, no matter its merit," says a Capitol Hill staffer.

In this context, not surprisingly, DOE's promise of credit supports and possible increased budget and personnel support for renewables programs won the hearts of many RETSIE attendees.

"I wish to tell you that there has rarely been a more dramatic change in the leadership of any cabinet office in this administration," said Rep. Vic Fazio (D-

Pat Collins

Calif.) following Hodel's address.

"The presence of Hodel and Collins here together should not be taken lightly by the industry," noted another senior solar DOE official, who asked to remain unidentified. "Many changes are already under way," he said.

The department's intention to push conservation after was borne out a week after RETSIE at a major briefing session of the U.S. delegation to the World Energy Congress. Pat Collins, given the prestigious place as the day's second speaker, told national energy leaders of plans to develop a DOE Energy Conservation Technology Research and Development Program, to reassess national energy conservation policies, technologies and research and development requirements, and to disseminate the good word on renewables.

"I believe that increasing our capability to conserve energy and to utilize renewable energy resources is clearly of benefit to us all," Collins told his audience. "The potential for continued technological improvements, and for increased contributions of energy to meet needs by worldwide renewable energy systems appears to be almost limitless."

The good word did not convince all, however. Lobby Director Sklar calls the DOE message "a ritual dance before election time."

"Our concern is that they are softening up the business community by using the tax credits supports to do away with the federal solar research program," Sklar says. "We should be very wary. The DOE does not have power over tax credits, Treasury Secretary Regan has power over the credits and these issues. We should not be making deals on any of this."

Salt storage

From Page One

When the testing was finished, the plant's future was unclear. That's when meetings began among the promoters, who last February started re-engineering the plant to produce power using the molten salt system.

"It's difficult to get 12 companies to agree on a project like this," says F. N. Christopher, commercial manager of Olin Corporation, Stamford, Conn., supplier of the salt and one of the project's founders. "But everyone rallied around the flagpole, and what came of it was a great project and a great working spirit between the sponsors."

The central receiver will generate approximately 750 kW, to be sold to the Kirtland Air Force Base.

Cash financing includes $1.2 million from EPRI and four utilities, $1.8 million from DOE, and $1.2 million from the Arizona Solar Energy Commission and six private companies. The latter include Babcock and Wilcox, Martin Marietta Aerospace Corp., McDonnell-Douglas Astronautics Co. Olin, and Foster Wheeler Solar Development Corporation.

The plant is expected to be operational November 15.

Solar Bank president says Bank "unnecessary

WASHINGTON

THE MAN President Ronald Reagan last month nominated as president of the Solar Energy and Energy Conservation Bank says he finds the bank "costly and unnecessary." However, Richard Francis says he will follow congressional mandate and continue a careful policy of expending taxpayers' monies. That includes, he says, his desire to see passive solar technologies increasingly funded by the bank.

"From all indications at Housing and Urban Development," the bank's sponsoring agency, he says, "active solar is just not cost effective...it has not reached the point of technical perfection."

Francis assumes his position amidst charges that while he was bank manager his previous position held since Reagan came to office, the bank repeatedly delayed spending congressionally-appropriated monies. "Dick Francis has actively stonewalled the will of congress, and has made it known he opposes the program he is about to head up," was the news release from the Solar Lobby that greeted his nomination.

Francis denies the charges. "The implication is that I've delayed the program, and that is just not the case," he says. "In fact, as it stands now, the money is not being used. There is no indication that people will borrow money to do what the bank was set up to do."

The Solar Bank was founded by the Carter administration to help middle and lower income families reduce the high up-front cost of solar and conserva-

tion expenditures. The Reagan administration, after twice trying to rescind congressionally mandated budgets, settled for re-writing the bank regulations which congress still has not accepted because of criticism that the regulations severely limit the bank's ability to lend.

As of last month the bank had disbursed $30 million to states and had $11 million in FY 1983 monies and $25 million in FY 1984 monies to disburse before September 1984. Francis says the remaining funds will be spent "sometime this fall" after HUD assesses how states are using their 1983 allocations.

Francis replaces Robert W. Karpe who was acting president since Reagan took office. Karpe will remain as president of the U.S. Government National Mortgage Corporation (GNMA

TESTIMONY OF STEVEN FERREY, CHAIRMAN OF THE BOARD OF DIRECTORS
SCOTT SKLAR, POLITICAL DIRECTOR
OF THE SOLAR LOBBY, WASHINGTON, D.C.

I. EXECUTIVE SUMMARY

Thank you very much Mr. Chairman for the opportunity for us to appear before you today. We would like to review this executive summary with you and have the rest of our testimony included as part of the hearing record. I am the Senior Energy Counsel of the National Consumer Law Center, headquartered in Boston, Massachusetts. I specialize in my work on financing cost-effective conservation, load management and renewable energy measures. I have been involved closely in the development and implementation of the Solar Energy and Energy Conservation Bank (the "Bank"). The President appointed me to a three-year term, which is now half completed, as one of five members of the Energy Conservation Advisory Committee of the Bank.

I have served as an advisor on cogeneration and dispersed power technologies to the U.S. Congress Office of Technology Assessment. I am Chairman of the Board of Directors of the Solar Lobby, a nationwide organization comprised of 60,000 members from every state in the nation. Scott Sklar, who is testifying with me today, is the Solar Lobby's Political Director. It is a pleasure to be able to share with you today our thoughts on the lack of progress on the Solar and Conservation Bank.

Scott Sklar, Political Director

In January of this year, the Department of Housing and Urban Development announced that $30.4 million would be transferred to forty-eight states to carry out the Bank mandate. This represents about three-quarters of the $41.8 million of FY '82 and FY '83 appropriation remaining in the Bank.

The remaining $11 million was to be given to those states which had the best programs sometime later in the fiscal year. Approximately one week after this announcement, the Reagan budget indicated that the $11 million dollars was to be transfered to the $1.9 billion Low-Income Energy Assistance Program. Obviously, this $11 million will not have much impact on a $2 billion program but rather it is a not-so subtle attempt to close down the Bank.

The Solar Lobby has been instrumental in developing a bipartisan legislative initiative entitled the "Solar Energy National Security and Employment (SENSE) Act." H.R. 1595 was introduced by Representatives Timothy Wirth (D-CO) and Silvio Conte (R-MA) and each of the four titles were also introduced as separate bills with its own set of bipartisan prime sponsors. H.R. 1599 which is Title IV of the SENSE Act titled, the "Consumers Incentives Act of 1983" was introduced by Representatives Stephen Neal (D-NC) and Stewart McKinney (R-CT). In this Title, the Solar Energy and Energy Conservation Bank is extended to 1990, and certain modifications are made to the original authorization of the bank to insure that the program is carried out under the original intent of Congress.

I cannot underscore any more the need to have programs that assist the middle class in cutting their home energy bills. The Bank is a unique program that deserves broad Congressional support.

Steven Ferrey, Solar Lobby Board Chairman

In the attached testimony, I have detailed in some length why the Solar Energy and Energy Conservation Bank is necessary and how the Bank program has not been administered with the intent of Congress in mind. The following points need to be emphasized:

1. The Solar and Conservation Bank fills gaps in the market as does no other program. A consultant from HUD calculates that the residential renewable energy tax credit is effectively unavailable in full to 78 percent of the American taxpayers.

II. The Administration has failed to execute requirements for prompt establishment and operation of the Bank. It has refused to issue operating regulations (as required by Congress no later than March 30, 1981). As required by law, the Bank has failed to convene each Advisory Committee and the Bank has failed to issue annual reports in a timely manner.

III. The Administration has failed to spend the Bank's funds as required. In the Federal District Court, a bipartisan group of Congressmen, the Solar Lobby, members of the Bank's two Advisory Committees, lenders, builders, and several national organizations, successfully brought suit last summer against the Reagan Administraion for not spending the funds appropriated by Congress. Judge Haight, reviewing the legislative history and Congressional mandate, ordered the Administration to spend these funds as expeditiously as possible. Now, more than one year after initiation of this suit, not only has the Administration failed to spend this money expeditiously but they are attempting to transfer money out of the program. This clearly raises grave legal questions as to compliance with the Court's order.

IV. The Administration has failed to hire enough staff to carry out this program in an effective and responsible manner.

I know the Committee has many competing interests with ever dwindling financial resources. However energy bills are rising dramatically for many families already stretched financially. All that they ask is a chance to invest in energy conservation measures. The Solar and Conservation Bank is one of the few programs that lets the average citizen have access to conventional credit markets, as the attached Harvard Journal on Legislation article spells out in detail. The Solar and Energy Conservation Bank opens up the marketplace, through existing financial institutions, to those who need it most -- the working poor and the middle class who do not qualify for or cannot use energy tax credits.

Thank you for the opportunity to testify. Scott and I would be pleased to answer any of your questions.

II. THE SOLAR AND CONSERVATION BANK FILLS GAPS IN THE MARKET THAT NO OTHER PROGRAM REACHES

The market is not working well to deliver conservation measures to a broad section of the nation's households. I am including as an attachment to my testimony a copy of "Solar Banking: Constructing New Solutions to the Urban Energy Crisis," that appeared recently in the Harvard Journal on Legislation. Let me summarize very briefly the salient points made in this article.

First, despite the intention of the Congress, approximately half of all American households are screened off from effective access to conservation and solar energy incentives. The primary federal incentives for energy conservation and solar energy measures installed in buildings are the federal residential tax credits. The Energy Tax Act of 1978 created a 15% energy conservation tax credit, as well as a 40% renewable energy tax credit, for investments applied to a taxpayer's "principal residence." The credits are nonrefundable; they can be taken only if a taxpayer has offsetting tax liability.

Even families of moderate income cannot take the full credits. For example, a family of four earning $15,000 in 1980, taking the standard tax deductions and exemptions, would owe a federal tax liability of $1,247. Even spreading the credits over the allowed two tax years, this family would not be able to take a full $4,000 renewable energy tax credit. Landlords, unless a building they own is also their "principal residence," cannot take these tax credits. A consultant for HUD calculates that the renewable energy tax credit effectively is unavailable in full to 78 percent of American taxpayers.

This skewed use of the tax credits has occurred in practice. The following table illustrates that in 1978, 81 percent of the combined residential tax credits were claimed by taxpayers with adjusted gross incomes in excess of $15,000, even though this group represents only the top 38 percent of taxpayers. Moreover, the top 25 percent of the population, represented by taxpayers with adjusted gross incomes in 1978 of over $20,000, claimed fully 62 percent of the federal energy tax credits.

TOTAL INDIVIDUAL RESIDENTIAL CREDITS, 1978
(before limitations)

Adjusted Gross Income	Number Returns Claiming Credits (1000's)	Percent	Total Dollar Credits Claimed (1000's)	Percent
$ 0- 5,000	57.1	1%	$ 44.5	1%
5,000-10,000	436.6	7%	282.7	7%
10,000-15,000	641.3	11%	413.7	10%
15,000-20,000	1,119.6	19%	696.3	17%
20,000-plus	3,646.1	62%	2,653.0	65%
TOTALS	5,901.7	100%	$4,090.1	100%

Source: I.R.S., 1978 Statistics of Income, Table 8 (1978)

In rental housing, a new element is introduced into the market equation: the residential energy consumer is a different party from the owner. Rented dwellings constitute one-third of the total housing stock. Of these 27 million rental units, two-thirds are multifamily in design, and fully 40 percent of the multifamily dwellings are in units of ten or more per building. When rental units are individually metered, tenants, as the customers of utilities, receive the pricing signals from their usage directly. The owner experiences no direct economic incentive to undertake conserving capital improvements.

Correspondingly, in master-metered multifamily rental units, tenants have neither the economic incentive nor the legal ability to make energy efficiency changes to the

owner's building. Even in master-metered rental units, owners commonly will make no unnecessary investment unless it promises a sure two- to three-year payback, according to analysis underway by the Congressional Office of Technology Assessment. Since the federal tax credit is limited to principal residences, owners of rental buildings who do not reside in these buildings are ineligible for credits. Almost the entire rental housing stock, constituting one-third of all dwellings, in institutionally screened off from access to conservation and solar tax incentives.

The appended Harvard Journal on Legislation article goes into substantial detail about how the failure of the energy tax credits to reach renters, low-income and elderly populations simultaneously disadvantages urban regions. The consequence is loss of jobs and deterioration of the fiscal base in urban regions. For more detail on this phenomenon, I commend to your attention the appended article.

The Solar and Conservation Bank is indispensable to a balanced energy program because it fills these glaring gaps in the operation of the market. First, the Bank specifically makes tenants eligible for energy conservation assistance. Second, the amount of assistance available is inversely related to the income of the borrower. Low and moderate income households receive a greater benefit, which allows them to participate in using energy more efficiently and cuts the crippling utility bills that they now confront.

Third, cities, states and conventional lenders are allowed to participate as lenders/disbursors of Solar and Conservation Bank funds. Cities can use Bank funds to leverage other local funds for the provision and delivery of conservation and solar energy improvements. The operation of the Solar and Conservation Bank is an essential complement to market forces and tax credits to maintain an

equitable and effective energy policy.

III. THE ADMINISTRATION HAS FAILED TO EXECUTE REQUIREMENTS FOR ESTABLISHMENT AND OPERATION OF THE BANK

The Bank was created as Title V of the Energy Security Act of 1980, in June of 1980. Between October 1980 and January 1981, the administration staffed the Bank and set out to draft required regulations and to make the Bank operational. Since February 1981, the administration has refused to carry forward in any manner to see that the Bank became operational.

This refusal flies in the face of clear Congressional intent as expressed in both the authorization and appropriation for this program. In my opinion, it also violates the law. The Bank's legislation provides four clear requirements for operation, set out below, that provide a benchmark against which this Committee can judge the compliance of any administration to implement this program in a manner consistent with Congressional directive.

A. The Requirement to Issue Operating Regulations No Later Than March 30, 1981

Because of the Congressional sense of urgency to establish and operate the Bank, the Bank's authorizing statute prescribes a strict schedule for the enactment of Operating regulations. The statute provides:

> As soon as practicable, but not later than 180 days after June 30, 1980, the Board shall issue such final rules and regulations as the Board determines are necessary to carry out this chapter, including rules and regulations to assure that there will be no fraud in the provision of financial assistance through grants under this

> chapter, except that any final rules and regulations with respect to multifamily residential, commercial, or agricultural buildings may be issued later than 180 days after such date but not later than 270 days after such date.

12 U.S.C. 3618. (Emphasis added.)

Thus, this statutory schedule requires all operating regulations to be in place no later than March 30, 1981. There are no exceptions to this deadline. All significant HUD regulations, including those for the Bank, undergo a 15-day review by both houses of Congress prior to promulgation. 12 U.S.C. 3604(e). The Board of the Bank promulgated a set of bylaws to govern its internal procedures, 45 Fed. Reg. 61290 et seq. (1980), as well as Advisory Committee charters, 45 Fed. Reg. 78235 et seq. (1980).

During the latter part of 1980, the Bank Board caused to be prepared and approved a 97-page set of interim final regulations to govern provision of Bank assistance for single and multifamily dwellings. These regulations were submitted for review to the committees in the Senate and in the House of Representatives that exercise jurisdiction over the Bank. The regulations were ready in mid-January 1981 for transmission to the Federal Register for publication as interim final regulations.

On January 20, 1981, new Cabinet Secretaries assumed their roles as the five members of the Bank's Board. They stopped the submission of regulations to the Federal Register. No operating regulations for the Bank have been published. The final statutory deadline passed more than one year ago. In September 1981 the Congressional Conferees on the Bank's FY 82 appropriation again unanimously directed the Chairman of the Bank Board "to expedite all Bank implementation activities by moving rapidly to publish regulations..." Conference Report No. 97-222, 97th Cong.,

1st Sess. 7 (1981). The Board has taken no action.

B. The Requirement to Convene Advisory Committees

The statute establishes two five-member Advisory Committees for the Bank--one to advise the Board on its solar energy assistance and one to advise the Board on its energy conservation assistance. 12 U.S.C. 3606. The members of each Advisory Committee are appointed by the President of the United States and serve two- or three-year terms. One member of each Advisory Committee must represent (1) consumers, (2) financial institutions, (3) builders, (4) producers or installers of the conservation or solar energy measures financed by the Bank, and (5) architectural or engineering interests. 12 U.S.C. 3606(a),(b). Individuals were appointed to fill all five positions on each Advisory Committee and all positions currently remain filled.

Each Advisory Committee is required to "convene in ordinary session four times each year." 45 Fed. Reg. 78236-7 (1980). Each Advisory Committee can convene only when called to open public meeting by the Board of Directors or by a federal employee designated by the Board. Id. The Advisory Committees have the power to hold public hearings. Id. They are required to issue an annual report before the end of each calendar year as well as to incorporate their views in the annual report the Board is required to submit to the Congress. Id., 12 U.S.C. 3617(a).

Each Advisory Committee met informally on January 15, 1981, with HUD Secretary Landrieu, then-Chairman of the Board of the Bank, and with the acting officers and staff of the Bank. Since that meeting, the Board has refused to convene meetings of either Advisory Committee.

Consequently, neither Advisory Committee has held any meetings, despite requests to HUD Secretary Pierce by committee members. The reports required to be prepared and submitted by each Advisory Committee before the end of calendar year 1981 have not been completed. The Advisory Committees have not been convened to discharge their appointed duties at any time during the current fiscal year, despite the fact that the Bank has a $21.85 million appropriation.

C. The Requirement to Issue Annual Reports

The statute requires the Board to submit to the Congress a detailed annual report:

> The Board shall submit an annual report to the Congress and to the President of the United States which includes, among other matters, the views of the President of the Bank, the Energy Conservation Advisory Committee, and the Solar Energy Advisory Committee, with respect to--
>
> (1) the operation of the Bank during the previous year;
>
> (2) the problems of the energy conservation and solar energy industries, the Federal Government, and financial institutions which may be inhibiting the operation of the Bank or the acceptance by the public of the use of residential and commercial energy conserving improvements and solar energy systems;
>
> (3) the cost effectiveness of the program in terms of expenditure, specific residential and commercial energy conserving improvements, and energy savings, using statistically valid samples of the improvements assisted under this chapter;
>
> (4) the relative number of persons from various income groups who have received financial assistance under this chapter;
>
> (5) the total energy savings achieved because of the assistance provided under this chapter, based on an estimate of such savings using a statistically valid sample; and
>
> (6) recommendations for improvements in the operation of the Bank.

12 U.S.C. 3617(a) (emphasis added).

No annual report for calendar year 1981 or for any other

period was submitted by the Board.

D. The Requirement to Staff the Bank

To implement this program it obviously is necessary to have competent staff at HUD to administer the program. The Bank is managed and supervised by a President and two Executive Vice-Presidents. 12 U.S.C. 3605. Mr. Joseph Bracewell was appointed by President Carter as Acting President of the Bank in the latter part of 1980. Ms. Nancy Naismith and Mr. Joseph Levangie were appointed acting Vice-Presidents of the Bank in the latter part of 1980. All were dismissed by the Board without replacement in January of 1981.

Moreover, the new administration reassigned existing HUD staff who were detailed to work on the Bank. Outside consultants and staff in the process of being hired to staff the Bank were terminated. In September 1981 the Appropriations Conferees unanimously chose to

> " direct the Secretary of HUD to expedite all Bank implementation activities by moving rapidly to publish regulations, secure an agent, staff the Bank, and disburse loans and subsidies at the earliest possible date."

Conference Report No. 97-222, 97th Cong., 1st Sess., at 7.

IV. THE ADMINISTRATION HAS FAILED TO SPEND THE BANK'S FUNDS AS REQUIRED

The statute makes mandatory the expenditure of specified percentages of the Bank's appropriation during each fiscal year. For energy conservation, the statute specifies that:

> An amount equal to not less than 80 percent of the funds appropriated for a fiscal year under the authorization contained in section 3620(a) of this title shall be provided during such fiscal year for financial assistance under this chapter for the purchase and installation of residential energy conserving improvements in residential and multifamily residential buildings.
>
> An amount equal to not less than 15 percent of the funds appropriated for a fiscal year under the authorization contained in section 3620(a) of this title shall be provided during such fiscal year for financial assistance for the purchase and installation of residential energy conserving improvements in residential buildings owned by individuals whose income is less than 80 percent of the median area income, or in multifamily residential buildings with a majority of the dwelling units occupied by such individuals.

12 U.S.C. 3614(a)-(b) (emphasis added).

Providing similar assistance for solar energy equipment, the statute requires that certain percentages of the Bank's appropriation during each fiscal year be expended as follows:

> An amount equal to not less than 70 percent of the funds appropriated for a fiscal year under the authorization contained in section 3620(b) of this title shall be provided during such fiscal year for financial assistance under this chapter for the purchase and installation of solar energy systems in residential and multifamily residential buildings and for the purchase of residential and multifamily residential buildings which have such systems.
>
> An amount equal to not less than 5 percent of the funds appropriated for a fiscal year under the authorization contained in section 3620(b) of this title shall be provided during such fiscal year for financial assistance for the purchase and installation of solar energy systems in residential buildings owned by individuals whose income is less than 80 percent of the median area income, or in multifamily residential buildings with a majority of the dwelling units occupied by such individuals.

12 U.S.C. 3615(b)-(c) (emphasis added).

Despite the fact that the Bank has had a valid FY 82-83 appropriation of not less than $41.85 million for the entire duration of the fiscal year, not one penny of assistance has been made available to any household or small business for solar energy or conservation purposes. For many families and elderly persons, not eligible for public assistance for their energy bills or for their efforts to perform conservation, this refusal to make available the

Bank's conservation assistance is forcing them to choose between heating their homes and feeding their families.

V. THESE FAILURES VIOLATE BOTH THE INTENT OF THE CONGRESS AND THE LAW

In enacting the Bank, the Congress expressed unambiguously its intention that the Bank hire staff, issue regulations, hire an agent and otherwise perform all functions necessary to operate the Bank and to make its funds available to the public. As I have testified, not only have the five Cabinet Secretaries who are Directors of the Bank refused to perform many of these tasks, but they have moved slowly in the tasks that they have performed. If on January 21, 1981, the new Board of Directors of the Bank had done nothing more than to allow the momentum of the Bank to continue, the Bank would long ago be operating.

But this did not occur. Consequently, the Bank still is not operating -- there are no regulations, not one dime of money has been distributed under this program and not one ceiling has been insulated -- now almost three years after enactment. The very real personal consequence of this calculated delay is that thousands of families desperately in need of conservation will be doomed to spend yet another winter unable to pay for heating their uninsulated homes. This is a tragedy -- one that has no rational explanation.

In my opinion, these actions also violate the law. Going back to a plethora of cases litigated to contest the impoundment of funds during the Presidency of Richard Nixon,

the federal courts consistently have held that the executive branch does not have discretion to withhold funds such as those of the Solar and Conservation Bank. Where legislation employs the command "shall," the federal courts have viewed this language as a nondiscretionary command to the Executive to spend:

> Statutory language that an official "shall" perform an act has been repeatedly held to be mandatory in nature. [19. "Shall" is the language of command." Boyden v. Commissioner of Patents, 142 U.S. App. D.C. 351, 441 F.2d 1041, 1043 n.3 (1971), citing Escoe v. Zerbst, 295 U.S. 490, 493, 55 S. Ct. 818, 79 L. Ed. 1566 (1935) and Richbourg Motor Co. v. United States, 281 U.S. 528, 534, 50 S.Ct. 385, 74 L. Ed. 1016 (1930).] It deprives the official of discretion and makes the commanded act a duty, a ministerial act.

Pennsylvania v. Weinberger, 367 F. Supp. 1378, 1381 n. 19.

In his March 10, 1982 transmission to the Congress of Report B-205053, the Comptroller General concurs with the mandatory nature of spending statutes that are drafted as is the Bank's statute. On February 5, 1982, the President submitted a request to the Congress to rescind the Bank's funds. Pursuant to the Budget and Impoundment Control Act of 1974, the Congress had until April 23, 1982 (45 legislative days) to rescind funds. Neither house of Congress chose to rescind. In effect, Congress has now spoken yet a third time in support of the Bank.

Yet no response has transpired at the Bank. There is no discretion in the statute for the executive to refuse to issue regulations or refuse to staff the Bank:

> Any failure during any fiscal year to provide the amount of financial assistance required by subsection (a) of this section or subsection (b) of this section shall not delay the provision of other financial assistance under this chapter.

12 U.S.C. 3614(c); see also 12 U.S.C. 3615(d).

There is also no discretion for the executive to refuse to spend mandatory program funds, even during the 45 legislative days that the President's rescission request was pending. The current appropriation for the Bank specifies

that monies are appropriated "for the fiscal year ending September 30, 1982." Pub. L. 97-101. Each of these failures constitutes a serious violation of the law in my opinion.

I would be glad to entertain any questions that the Committee might have.

SOLAR BANK: DATES, EVENTS

June 30, 1980: The Solar Bank is enacted as part of the Energy Security Act of 1980, Public Law No. 96-294 (1980).

October, 1980: President Carter appoints Acting President and two Vice Presidents to head up staff of the Bank, who promulgated a set of By-Laws to govern the Advisory Committees and a set of operating procedures for the Bank.

December 12, 1980: The President and Vice President drafted and the Bank Board approved a 97-page set of interim final regulations to govern the Bank. These regulations were submitted on December 12, 1980, for review to the appropriate committees in the Senate and House exercising jurisdiction over the Bank.

January 1, 1981: Staff has drafted regulations to operate the Bank, is ready to solicit companies to act as an agent for the Bank and within a few months begin operation.

January 13, 1981: The two 5-member Advisory Committees to the Bank, appointed by the President, met informally with HUD Secretary Landrieu and the Officers of the Bank.

January 20, 1981: Secretary Pierce, newly appointed by President Reagan, refuses to publish the already drafted regulations for the Bank, despite a Congressional mandate that these regulations be prepared no later than December 30, 1980 (for residential regulations) and March 30, 1981, (for commercial, agricultural, and multifamily regulations). Secretary Pierce terminates all remaining staff and ceases all operation of the Bank. He refuses to convene the Advisory Committees despite a requirement in Regulations that they meet four times annually. He ceases all operations of the Bank.

March 13, 1981: By letter to the other four Cabinet Secretaries who constitute the Board of Directors of the Bank, Secretary Pierce at HUD states: "After reviewing the Bank Act, I find that I cannot support its programs." Secretary Pierce asked for a written action to "permit me to wind up the business of the Bank."

May 7, 1981: HUD returned the nameplates to all Advisory Committee members of the Bank, stating that they would have no use for the nameplates or the Advisory Committee members.

June 5, 1981: The Congress rescinds the Bank's FY 81 appropriation in light of a new FY 82 appropriation taking its place.

July 13, 1981: As part of the Omnibus Reconcilliation Act, the Senate reauthorized the Bank at $50 million for FY '82.

August 13, 1981: The Congress reauthorized the Bank at $50 million for each of the next three fiscal years.

September 9, 1981: The appropriations conference unanimously appropriated $21.85 million for FY 82 funding.

September 11, 1981: The Joint Congressional Conference Committee of the Banking Committees unanimously decides to append to the Bank's FY 82 appropriation the following command: "...direct the Secretary of HUD to expedite all Bank implementation activities by moving rapidly to publish regulations, secure an agent, staff the Bank, and disburse loans and subsidies at the earliest possible date." Conference Report No. 97-222, 97th Cong., First Session, at p. 7.

October 20, 1981: The President submits a deferral message to further delay bank's funds.

February 8, 1982: President Reagan requests a rescission of all FY 82 Bank funds. Rescission Proposal No. R-82-22, H. Doc. 97-140, at 27. Neither House of Congress took any action to rescind the Bank's funds. The rescission request failed.

Early 1982: Secretary Pierce ignores requests from members of Congress, states, public interest organizations, and members of the Bank's Advisory Boards to begin operation of the Bank.

April 7, 1982: Five bipartisan members of Congress, the State of New York, the cities of Philadelphia and St. Paul, members of the Bank's Advisory Boards, low-income persons, a credit union, several construction firms, the Solar Lobby and several other national organizations bring suit alleging an illegal impoundment of bank funds and a failure to follow the Congressional command to "expedite" all Bank implementation activities by moving rapidly to publish regulations, secure an agent, staff the Bank, and disburse loans and subsidies at the earliest possible date.

April , 1982: The U.S. Comptroller General concluded that the President had no authority to withhold implementation of the Bank during 1982.

April 30, 1982: The Administration reversed itself and decided that it would indeed spend the Bank's funds. David Stockman released impounded funds to HUD. However HUD argues that it can take as long as it wants -- perhaps several years -- to get around to spending these funds.

July 16, 1982: Oral argument was presented on behalf of plaintiffs regarding this suit:

- The Court noted that regulations have to be in place before any money can be spent (Transcript at p. 30).
- HUD's attorneys stipulated that in 60 to 90 days the regulations could be promulgated to operate the Bank (Transcript at pp. 52-53, 55-56).
- HUD's attorney indicated that implementation of the Bank is "a matter of months, your honor, not a year or anything like that..." (Transcript at p. 61).
  Since the Bank decided not to hire an agent, but to distribute the money directly to states, HUD's attorney indicated that implementation could be even more rapid.
- HUD's attorney assures the court that it is only a matter of a couple of months until the money actually gets out (Transcript at p. 69).

June 29, 1982: The United States Federal District Court rules in favor of plaintiffs in the lawsuit. The Court specifically finds that the Bank must, consistent with the direction of Congress, spend the money as "expeditiously as possible." The Judge undertakes ongoing supervision of the implementation of the Bank and the expenditures of its funds. This guarantees that funds will be made available under the Solar and Conservation Bank.

August 29, 1982: a) The Bank requested applications from the States to spend the Bank's funds. The deadline for applications was extended until mid November, 1982.

September 2, 1982: a) At a hearing before the federal Judge to monitor the Bank's compliance, HUD admits that it has made only two policy decisions in the prior two months (Transcript at p. 39). b) HUD's Counsel assures that there has been great progress made on the regulations (Transcript at p. 43). c) HUD's attorney indicates to the Court that the Regulations will be "finished" sometime in November..." (Transcript at p. 44).

November , 1982: Forty-eight States and several territories requested in excess of $135 million of Bank funds. The Bank made notification of tentative awards of $30 million.

December , 1982: The Bank submitted draft regulations to Congressional Committees.

October 1, 1982: Congress appropriates an additional $20 million for FY 83 for the Bank, bringing the total to $41.85 million.

The CHAIRMAN. Thank you. I have no questions.

Thank you very much for your testimony. The attachments to the testimony will be made a part of the record. Thank you for your appearance this morning.

Ms. MOODY. Thank you.

The CHAIRMAN. There are no other witnesses to be heard. That concludes the hearing this morning and the committee will be adjourned.

[Whereupon, at 11:20 a.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Informational Statement of Dr. Richard H. Francis

UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Francis (LAST) Richard (FIRST) Haudiomont (OTHER)

Position to which nominated: President, Solar Energy and Energy Conservation Bank

Date of nomination: August 26, 1983

Date of birth: 8 (DAY) 3 (MONTH) 25 (YEAR) Place of birth: Boston, Massachusetts

Marital status: Married Full name of spouse: Della May Bailey Francis

Name and ages of children: Mark, 32; Clare, 31; Daniel, 27

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Lynbrook HS (NY)	1938-42	Diploma	1942
US Naval Academy	1945-49	BS	1949
Yale University	1955-58	MA	1958
George Washington Univ.	1961	—	—
University of Maryland	1967-77	PhD	1977

Employment record: List below all positions held since college, including the title and description of job, name of employer, location, and dates.

US Marine Corps	1949-69
Vice President Washington College, Chestertown, MD, College Adm.	1970-71
Executive Director (Association) West St. MD Independent Colleges & Universities, Annapolis, MD	1971-74
Assoc. Dir., Fed Rels 1818 R Street, NW Assoc. of Am Colleges Washington, DC (Association)	1974-76
Dir, Gov't Rels 1717 Mass. Ave., NW Nat'l. Assn. Indp. Colleges & Universities (Assn)	1976-78
Ex. Vice President 1800 M Street, NW Nat'l. Multi Housing Assoc., Washington, DC	1978-81
Special Asst. 451 7th Street, SW Dept. HUD, Policy, Development & Research	1981-82
Manager, Solar Energy 451 7th Street, SW & Energy Conservation Bank	1982-Present

Employment record—Continued

Military service: Enter all military service if not included above: service, dates, rank, type of discharge.

US Marine Corps 1943-45 Pvt - Sgt, Honorable

US Naval Academy 1945-49 Midshipman, Graduation

US Marine Corps 1949-69 2d Lt - Lt Col, Retired

US Marine Corps 1970 Lt Col - Recall to temporary active duty

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Navy Commendation Medal w/Combat "V" (US)

Joint Services Commendation Medal (US)

Order of Naval Merit (Spain)

PI Sigma Alpha National Honor Society in Political Science

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
Country Club of Fairfax	--	1981-Present
US Naval Academy Alumni Assn.	--	1949-Present
Woodlawn Country Club	Sec. Stock Bd.	1967-81
Amer. Embassy Personnel Assn.	President	1963-66
Mt. Vernon Civic Assn.	--	1967-73
Cub Scouts of Amer. Personnel	Commissioner	1965-66
Shadow Walk Homes Assn.	Secretary	1973-83

Published writings: List the titles, publishers and dates of any books, articles, or reports you have written.

"Marine Professor", Marine Corps Gazette, 1960

Qualifications: State fully your qualifications to serve in the position to which you have been named. (attach sheet)

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

N/A

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization.

No

3. Has anybody made you a commitment to a job after you leave government?

No

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

N/A

(b) If you have been appointed for an indefinite term, do you have any known limitations on your willingness or ability to serve for the foreseeable future?

No

Potential conflicts of interest:

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

None

Qualifications for the Presidency of the Solar Bank

I have served as chief operating officer of the Bank since its reestablishment in the Department last year, first as Comptroller, then as Manager. I have actively engaged in all activities related to expediting start-up activities from providing discussion materials at Board meetings establishing Bank policy to testifying before the Congress, while running the day-to-day operations of the Bank. A list of accomplishments achieved during my tenure as Comptroller and Manager of the Bank is attached.

Prior to serving the Secretary of HUD in my present capacity, I served as Senior Policy Advisor to the Assistant Secretary for Policy, Development and Research. Again, my responsibilities entailed the development and implementation of new policies, programs and projects on housing matters of national impact. In my prior positions, I have had direct contact with members of Congress, Congressional staff members, the media and the general public.

In my career in the military, higher education and housing areas, I have been responsible for managing within the scope of both large and small organizations and effecting policy changes. This has included putting three organizations into operation from their inception, twice as Chief Operating Officer. I have a technical background, gained during my studies in engineering at the U.S. Naval Academy. In addition, during my military career, I was directly involved in research and development both in the areas of equipment and policy development.

I have set-up a smooth functioning organization in the Department in one year in a manner which will attain the most effective use of public funds.

MAJOR ACCOMPLISHMENTS OF THE SOLAR BANK UNDER RICHARD H. FRANCIS

A. STAFFING

1. Assembled staff to manage day to day affairs of the Bank as of June 1982.

B. REGULATIONS

1. Completed assessment of environmental impact of interim regulations on November 16, 1982.

2. Prepared interim regulations and submitted to Congress on November 30, 1982.

3. Revised interim regulations and resubmitted to Congress on April 12, 1983.

4. Published interim regulations in the Federal Register on May 31, 1983.

C. PROGRAM IMPLEMENTATION

1. Prepared an action plan and preliminary program plan and presented these to the Board of Directors of the Bank in a meeting on July 29, 1982, with recommendations.

2. Published a Notice of Funding Availability in the Federal Register on August 27, 1982, pursuant to recommendations made to and adopted by the Board of Directors at the July 29, 1982, meeting.

3. Distributed copies of the NOFA to Advisory Committee members requesting their comments.

4. Developed an evaluation plan for determining acceptability of proposals received from States.

5. Held four Board meetings of the Bank's Board of Directors consisting of Secretary Pierce and designees from Agriculture, Commerce, Treasury and Energy.

6. Reviewed and evaluated proposals from 48 States and 5 territories and submitted a summary report and recommendations to the Board of Directors on December 10, 1982 for a December 17th meeting.

7. Awarded funding to 48 States, two territories, and the District of Columbia on January 17, 1983.

8. Obligated $30.4 million by cooperative agreements with program participants by September 30, 1983.

9. Established Treasury Financial Communications System with all program participants.

10. Arranged for appointment of six new advisory committee members to replace those with terms expiring on January 17, 1983.

3. Describe any business relationship, dealing or financial transaction (other than tax-paying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None

4. List and describe any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or for the purpose of affecting the administration and execution of national law or public policy.

Associate Director, Federal Relations, Association of American Colleges (Higher Education Issues)

Director, Government Relations, National Association of Independent Colleges and Universities (Higher Education Issues)

Executive Vice President, National Multi Housing Council (Housing Issues)

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

N/A

6. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them.

HUD's Office of General Counsel has briefed me on the requirements of the statutes and regulations on conflicts of interest and has given me the attached memorandum of November 14, 1983, which indicates the statutes and regulations on conflict of interest applicable to this position. I am satisfied that my current financial interests and outside activities present no conflict of interest, and I will consult the Office of General Counsel before making any change in my financial investments or undertaking any new outside activities.

Financial statement:

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).

2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.

USMC Pension - $1400/mo (reduced from $2000/mo by virtue of government employment)

VSRS Pension (wife) - $360/mo

3. Are any assets pledged? (Add schedule.)

No

4. Are you currently a party to any legal action? No

(Wife is currently involved as a defendant in a personal injury lawsuit involving a horseback riding accident).

5. Have you ever declared bankruptcy?

No

6. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain.

Yes

7. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

No

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

OFFICE OF THE GENERAL COUNSEL

NOV 14 1983

MEMORANDUM FOR: Richard H. Francis, Manager
Solar Energy and Energy Conservation Bank

FROM: David D. White, Assistant General Counsel for
Administrative Law

SUBJECT: Compliance with Conflict of Interest
Laws and Regulations

As you have requested, this memorandum will set forth the laws and regulations on conflict of interest which will apply to you in the position of President of the Solar Energy and Energy Conservation Bank. This information is to be submitted to the Senate Committee on Energy and Natural Resouces in connection with your nomination to that position.

There are no special conflict of interest provisions applicable to the position of President of the Solar Bank. Because the position is in the Department of Housing and Urban Development it is subject to HUD's Standards of Conduct regulations, 24 C.F.R. Part 0. In addition, like all positions in the executive branch (including your current position), it is subject to the criminal conflict of interest laws, 18 U.S.C. §§202-209. You are also required by the Ethics in Government Act to submit an Executive Personnel Financial Disclosure Report (SF-278).

You are aware that HUD's Standards of Conduct regulations generally prohibit your acquiring financial interests or engaging in outside employment in areas related to HUD's programs. You are also aware that you may not participate, in your Bank position, in any matter in which you, your spouse, partner or organization in which you are employed or hold a position, or an organization with which you are negotiating for future employment, has a financial interest.

I have reviewed the SF-278 you filed in May, 1983 and have concluded that it reveals no conflict of interest or other violation of HUD's Standards of Conduct regulations. The form has been approved by John J. Knapp, HUD's General Counsel and Agency Ethics Official and has been forwarded to the Office of Government Ethics for its review.

United States of America
Office of
Government Ethics

Office of Personnel Management
Washington, D.C. 20415

SEP 1 1983

Honorable James A. McClure
Chairman, Committee on Energy and
Natural Resources
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Richard H. Francis, who has been nominated by President Reagan for the position of President, Solar Energy and Energy Conservation Bank.

We have reviewed the report and have also obtained advice from the Department of Housing and Urban Development concerning any possible conflict in light of the Bank's functions and the nominee's proposed duties. Based thereon, we believe that Mr. Francis is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David H. Martin
Director

Enclosure

FINANCIAL DISCLOSURE REPORT

OGW 7-27-83 JE

Page 1

Status (Check Appropriate Box)

[ ] Incumbent [X] Nominee, Candidate [ ] Termination Report

NOTE All schedules must be filed. Enter "None" in areas or across schedules where appropriate.

Agency Use Only (OGE Use Only)

Date of Filing (Month, Day, Year): JUL 20 1983

	Last Name	First Name and Middle Initial
Reporting Individual's Name	FRANCIS	RICHARD H.
Position for Which Filing	Title of Position: President, Solar Energy and Energy Conservation Bank	Department or Agency (If Applicable): Housing and Urban Development
Location of Present Office	Address (Number, Street, City, State and Zip Code): 451 7th Street, SW, #2244, Washington, DC 20410	Room Number: 2244
	Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.):	Termination Date (If Applicable) (Month, Day, Year):
		Telephone No. (Include Area Code): 202-755-7166

Presidential Nominees Subject to Senate Confirmation

Name of Congressional Committee Considering Nomination: Energy and Natural Resources

Do You Intend to Create a Qualified Diversified Trust? [ ] Yes [X] No

Position(s) Held With the Federal Government During the Preceding 12 Months (If Not Same as Above)

Title of Position(s) and Date(s) Held: Comptroller and presently Manager, Solar Energy and Energy Conservation Bank

Certification

I CERTIFY that the statements I have made on the form and all attached schedules are true, complete and correct to the best of my knowledge and belief.

Signature of Reporting Individual: Richard H. Francis — Date (Month, Day, Year): May 25, 1983

Agency Ethics Official's Opinion

The information contained in this report discloses no conflict of interest under applicable laws and regulations.

Signature of Designated Agency Ethics Official/Reviewing Official: Dale Kuyp — Date (Month, Day, Year): July 14, 1983

Office of Government Ethics Use Only: 7/14/83

Signature: David H. Mark — Date (Month, Day, Year): 9-1-83

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

The Del Rich farm is a small horse boarding and breeding operation run on property which is part of the filer's residence. It produced no net income in 1982 and 1983.

(Check box if comments are continued on the reverse side)

378-102

Form 1240-31 870-8474

65

	Yes	No
Do you, your spouse, or dependent child receive income from, or have a beneficial interest in a trust?.....		X
If "yes", have you reported the income from the trust?.....		
If "yes", have you reported the assets of the trust?.....		
If "yes", is this trust an "excepted" trust?... or "qualified" trust?....		

	Yes	No
Are there any interests in property, purchases, sales or exchanges, or liabilities of a spouse or dependent child which you have not reported?		X
If "Yes," do you certify to all of the following? 1 They represent solely your spouse's or dependent child's financial interest or responsibility; 2 They are not, in any way, past or present, derived from your income, assets, or activities; 3 You neither derive, nor expect to derive, any financial or economic benefit from them, and 4 You do not have knowledge as to the composition of such interest or liabilities.		

Page Number ➤ 2 | Schedule A

Reporting Individual's Name: FRANCIS, RICHARD H.

Agency Use Only

Date of Filing (Month, Day, Year)

Spouse (S) or Dependent Child (DC)	Identification	Income: Type of Income (✓) Dividends	Rent	Interest	Capital Gains	Exempt Trust	Qualified Trust	Other (Specify)	Income: Category of Amount or Value (✓) None (or less than $201)	$201-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount (Only if "Other" Specified)	Date (Mo., Day, Yr.) (Only if Honoraria)	Interests in Property: Valuation of Assets (✓) Valuation Method	$1,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	$250,001-$500,000	Over $500,000
S	ST. MARY'S CHURCH, FAIRFAX STA., VA							Salary					X												
S	PR. WILLIAM SCHOOLS, VA							Pension Pending				X													
	USMC FINANCE CTR, MO							Pension						X											
S	FIRST TRUST CO			X				IRA											H			X			
	LORD ABBET DEV. GROWTH FD			X				IRA											F		X				
	COLLEGE RET EQUITIES FD							Tax Shelter											H			X			
	DEL RICH FARM							Business	X										A			✓			
	NY LIFE	X		X						X									A	X					
	CALVERT GROUP			X						X									H	X					
	NAVY FEDERAL CREDIT UNION			X						X															
	PRUDENTIAL INSURANCE COMPANY	X		X						X									A		X				
	EQUITABLE INSURANCE COMPANY	X		X						X									A		X				
	U.S. GOVERNMENT LIFE INSURANCE	X		X						X									A		X				

89

89

PURCHASES, SALES, AND EXCHANGES

This schedule is applicable only in the case of annual and termination reports.

Page Number 3 | Schedule B

Reporting Individual's Name: FRANCIS, RICHARD H.

Agency Use Only

Date of Filing (Month, Day, Year)

Report Applicable Transactions, Even If Also Reported on Schedule A.

(S, J or DC)	Identification of Property (real and personal)	Type of Transaction: Purchase	Sale	Exchange	Date (Month, Day, Year): Purchase	Sale or Exchange	Category of Amount or Value ( ): $1,001 to $4,000	$5,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
	NONE											

4

Reporting Individual's Name
FRANCIS, RICHARD H.

Date of Filing (Month, Day, Year)

	NONE		

	NONE		

	NONE		

Reporting Individual's Name: FRANCIS, RICHARD H.

Agency Use Only — Date of Filing (Month, Day, Year):

Page Number: 5

Schedule D

LIABILITIES

Name and Address of Creditor	Type of Liability (e.g., promissory note, margin account) (Enter interest rate and if applicable, term)	Category of Amount or Value ($10,001 to $50,000 / $50,001 to $100,000 / Over $100,000)
NONE		

POSITIONS HELD

Name and Address	Type of Organization	Position Held	From	To
National Multi Housing Council, 1800 M Street, NW Washington, DC 20030	Non-profit trade association	Executive Director	09/78	06/81
Department of Housing and Urban Development, Policy, Development and Research, 451 7th Street, SW, Wash. DC 20410	U.S. Government	Senior Policy Advisor	07/81	06/82
Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank, 451 7th, St., #2244, Wash. DC	U.S. Government	Comptroller	06/82	03/83
Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank, 451 7th St., #2244, Wash. DC	U.S. Government	Manager	04/83	Present

COMPENSATION IN EXCESS OF $5,000 PAID BY ONE SOURCE (This section is applicable only in the case of nominees and new entrants.)

Name and Address	Brief Description of Duties
National Multi Housing Council, 1800 M Street, NW Washington, DC 20030	Executive Director: Chief Operating Officer

AGREEMENTS OR ARRANGEMENTS

Description of Terms of Any Agreement or Arrangement	Parties	Date
NONE		

AFFIDAVIT

WASHINGTON
DISTRICT OF COLUMBIA) ss

I, Richard H. Francis , being duly sworn, hereby states that he/she has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his/her knowledge and belief, current, accurate, and complete.

Richard H. Francis

Subscribe and sworn before me this 14th day of November , 19 83

Bernard G. Banks
Notary Public, District of Columbia

My Commission Expires June 30, 1986

U.S. GOVERNMENT PRINTING OFFICE

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410

SOLAR ENERGY AND
ENERGY CONSERVATION BANK

February 21, 1984

Honorable James A. McClure
Chairman, Committee on Energy
and Natural Resources
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I look forward to meeting with you and members of the Committee to discuss my nomination as President of the Solar Energy and Energy Conservation Bank. As you know, I submitted a Statement For Completion By Presidential Nominees on November 14, 1983, in anticipation of hearings last session. In addition, a Confidential Financial Statement (SF-278) was submitted to the Senate Committee on Banking, Housing, and Urban Affairs on September 15, 1983, which was subsequently referred to Energy.

I understand through conversations with members of the Committee staff that additional submissions are unnecessary because changes have not occurred in the SF-278 or the Statement for Completion By Presidential Nominees.

If you or a member of your staff have any questions, please feel free to contact my office.

Sincerely,

R H Francis

Richard H. Francis
President-Designate

AFFIDAVIT

I, Richard H. Francis, being duly sworn, hereby states that he has read and signed the foregoing Statement for Completion by Presidential Nominees including the Financial Statement and that the information provided therein is, to the best of his knowledge and belief, current, accurate, and complete.

R H Francis

Richard H. Francis

Subscribe and sworn before me this 21st day of February, 1984.

Bernard E. Banks

Notary Public, District of Columbia
My Commission Expires June 30, 1986

APPENDIX II

Responses of Dr. Richard H. Francis to Questions Submitted by Senator Evans and Senator Tsongas

---

RESPONSES TO SENATOR EVANS' QUESTIONS

1. According to the statutes that you operate under, you are obligated to establish two Advisory Committees (one for solar energy and one for energy conservation). These committees are required to convene four times a year during an ordinary session.

In your testimony before the Committee, you said that the Advisory Committees have not met regularly over the past two years because the Board of Directors was of that opinion. Are you not operating in violation of the statutes that you operate under? Please provide a more detailed account by why the Advisory Committees have not been convened by the Board.

Answer: The Solar Bank Act (Title V of P.L. 96-294) did not designate a required number of advisory committee meetings. However, the advisory committee charters (FR 45-229) published on November 25, 1980 (attached), called for the committees to "ordinarily convene in full session four times each year..." The question states the committees are required to convene four times a year during an ordinary session. I think the placement of the word "ordinary" could cause one to misconstrue the intent of the charters.

The attached amended charters were approved at a Board of Directors meeting on November 22, 1982 and published in the Federal Register on September 9, 1983 (48-176). These charters call for advisory committees to "convene in full session as needed..." With the recent enactment of the Housing and Urban-Rural Recovery Act of 1983 (HURRA), each advisory committe will meet not less than two times per year at the call of its chairperson. This, along with other provisions of HURRA were discussed at a Board of Directors meeting on January 10, 1984 and the Board subsequently passed the attached written action which appoints new members and calls for the advisory committees to meet prior to the next Board meeting. A meeting is being set-up for early June and the Board is committed to regular meetings in the future.

The Bank has sought the consultation of advisory committee members by mail on the following occasions:

August 27, 1982 - Notice of Funding Availability (NOFA)
January 28, 1983 - Draft FY 1982 Annual Report
July 12, 1983 - Interim Regulations
September 21, 1983 - Amended Advisory Committee Charters
October 19, 1983 - Draft FY 1983 Annual Report

I believe that the Bank has acted in a lawful manner based on the advice of legal counsel in these matters and has encouraged advisory committee members participation by soliciting comments regarding major policy considerations.

2. The Bank is also required by statute to write and submit to Congress a detailed Annual Report. Have you written such reports for the 1981 and 1982 fiscal years? And have you submitted the reports to Congress? (I have not received a copy of any of the Annual Reports, although I was able to get a copy made of the 1983 Report that you submitted to the Energy Committee staff).

Answer: Annual Reports for the Solar Energy and Energy Conservation Bank were submitted to the Congress and to the President of the United States for fiscal years 1981, 1982 and 1983, and included all available information for each fiscal year. Copies were also supplied to the Energy Committee.

Enclosures

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Building 31, Room 2C05, Bethesda, Maryland 20205 (Area Code 301/496-5898), will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: August 29, 1983.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 83-24628 Filed 9-8-83; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

National Toxicology Program Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Toxicology Program (NTP) Board of Scientific Counselors, U.S. Public Health Service, Conference Room, Building 13, National Center for Toxicological Research (NCTR), Jefferson, Arkansas, on September 27 and 28, 1983. The meeting will be open to the public from 8:30 a.m. to adjournment on September 27. The preliminary agenda with *approximate* times are as follows:

8:30 a.m.–8:50 a.m. Report of the Director, NTP

8:50 a.m.–9:30 a.m. Status Report on the Ad Hoc Panel on Chemical Carcinogenesis Testing and Evaluation

9:45 a.m.–11:15 a.m. NIH/NTP Concept Reviews:

a. Analytical Chemistry Support Services

b. Cooperative Agreements:

—Chemical Disposition and Metabolism

—Characterizing the Role of Vegetables Oils in Pancreatic Lesions

—Development of a System for Co-Culture of Isolated Cells From Kidney and Liver

11:15 a.m.–12:15 a.m. Peer Review and Priority Ranking of Chemicals Nominated for NTP Testing. (Chemicals to be reviewed are among those listed in the Federal Register of March 4, 1983 (48 FR 9379–9380)

1:00 p.m.–3:00 p.m. Tour of NCTR

3:15 p.m.–5:00 p.m. Toxicology Data Management Systems—A Progress Report

The meeting on September 28 will be open to the public from 8:30 a.m. to adjournment. The preliminary agenda with *approximate* times are as follows:

NCTR Programs

8:30 a.m.–9:15 a.m. Developmental Toxicology

9:15 a.m.–9:30 a.m. Genetic Toxicology

9:30 a.m.–10:15 a.m. Biochemical Toxicology

10:30 a.m.–10:45 a.m. Office of Scientific Intelligence

10:45 a.m.–11:30 a.m. Chemistry

11:30 a.m.–12:00 p.m. Biometry

12:45 p.m.–1:30 p.m. Chemical Toxicology/Microencapsulation

1:30 p.m.–2:15 p.m. Office of the Director, NCTR

The Executive Secretary, Dr. Larry G. Hart, Office of the Director, National Toxicology Program, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone (919) 541-3971, FTS 629-3971, will furnish a roster of Board members and other program information prior to the meeting, and summary minutes subsequent to the meeting. For information on hotels and directions to the Center contact Mrs. Ruth Bryant, telephone (501) 541-4528, FTS 542-4528.

Dated: August 26, 1983.

David P. Rall,

Director, National Toxicology Program.

[FR Doc. 83-24629 Filed 9-8-83; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-83-1295]

Energy Conservation Advisory Committee and Solar Energy Advisory Committee; Charters

AGENCY: Solar Energy and Energy Conservation Bank, HUD.

ACTION: Notice of advisory committee charters.

SUMMARY: The Energy Conservation Advisory Committee and the Solar Energy Advisory Committee were established by the Solar Energy and Energy Conservation Bank Act, Title V of Pub. L. 96-294 [94 Stat. 719], to advise the Board of Directors of the Solar Energy and Energy Conservation Bank. In accordance with provisions of the Federal Advisory Committee Act, 5 U.S.C. App. I section 1 *et seq.*, the Secretary published charters for the advisory committees, on November 25, 1980 at 45 FR 78235. The aforesaid charters have been amended and duly approved by the Secretary as Chairperson of the Board of Directors of the Bank.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Francis, Manager, Solar Energy and Energy Conservation Bank, Department of Housing and Urban Development, Room 2244, 451 Seventh Street, SW., Washington, D.C. 20410 (202-755-7186).

SUPPLEMENTARY INFORMATION: There is appended hereto the text of the charters, as approved by the Secretary as of the date of this notice.

Dated: September 2, 1983.

Samuel R. Pierce, Jr.,

Secretary of Housing and Urban Development and Chairperson of the Board of Directors, Solar Energy and Energy Conservation Bank.

Energy Conservation Advisory Committee Charter

1. *Purpose.* This establishes the charter for the Energy Conservation Advisory Committee as required under the provisions of the Federal Advisory Committee Act [FACA] of 1972, Pub. L. No. 92-463, 5 U.S.C. App. I section 1.

2. *Objectives, Scope and Duties.* The Energy Conservation Advisory Committee will advise the Board of Directors (the Board) of the Solar Energy and Energy Conservation Bank (the Bank) for the purpose of assisting the Bank in carrying out its activities relating to residential and commercial energy conserving measures pursuant to the Solar Energy and Energy Conservation Bank Act (12 U.S.C. 3601). The function of the advisory committee shall be advisory only and all the matters under its consideration shall be determined, in accordance with law, by the Board of Directors of the Bank.

3. *Authority.*

a. The Energy Conservation Advisory Committee is mandated by and established under the authority of Section 508(a) of the Solar Energy and Energy Conservation Bank Act, Pub. L. No. 96-294, 94 Stat. 719, 724.

b. The Energy Conservation Advisory Committee shall operate in conformance with the requirements outlined in the Solar Energy and Energy Conservation Bank Act, and all applicable laws, rules, regulations and guidelines, promulgated by the Congress, the President, the General Services Administration and the Secretary of Housing and Urban Development.

4. *Composition.* The Energy Conservation Advisory Committee shall be composed of five members who are not officers of, and whose principal employment is not by, a Federal, State or local governmental entity. Each of the following groups shall be represented by one member who is able, due to education, training and experience, to represent its views: consumers, financial institutions, builders, architectural or engineering interests, producers or installers of residential and commerical energy conserving improvement.

5. *Appointments.*

a. Members are appointed by the Board to serve two-year terms.

b. The terms of members are automatically extended until new members are appointed.

c. Any member who becomes an officer or employee of any governmental entity may continue as a member of the advisory committee for not longer than 90 days after becoming such an officer or employee.

d. The terms of all members shall automatically cease upon termination of the advisory committee.

e. Any member may be removed prior to the expiration of his or her term at the discretion of the Board.

6. *Chairperson.* The chairperson of the Energy Conservation Advisory Committee shall be selected by the members of the advisory committee.

7. *Designated Federal Employee.* In accordance with section 10(e) of FACA, the Secretary of Housing and Urban Development has designated the Chief Operating Officer of the Bank to attend every advisory committee meeting. The Chief Operating Officer is the highest official of the Bank, whether President, Executive Vice-President or Manager or in the case of absence or vacancy, the official designee of such official.

8. *Meetings.* The Energy Conservation Advisory Committee shall convene in full session as needed and under the following conditions:

a. The Designated Federal Employee may call, and will approve in advance the scheduling and agenda of, advisory committee meetings and subcommittee meetings after consultation with the advisory committee chairperson (unless the office of chairperson is vacant).

b. A notice of all advisory committee meetings will be published at least 15 days in advance in the Federal Register.

c. Three members of the Energy Conservation Advisory Committee shall constitute a quorum, but a lesser number of members may hold hearings.

d. All advisory committee meetings will be open to the general public, except meetings concerned with matters listed in the Freedom of Information Act, 5 U.S.C. 552(b)) covering such subjects as investigatory files, trade secrets, and internal Government memoranda which are not available to the public upon request.

e. Detailed minutes of each meeting of the advisory committee shall be kept and their accuracy shall be certified by the advisory committee chairperson. The minutes shall conform with Departmental regulations and shall include:

1. The time and place of the meetings;

2. A list of advisory committee members and staff, Board members or delegates and Departmental employees present at the meeting;

3. A summary of matters discussed and the conclusions reached;

4. Copies of all reports received, issued, or approved by the advisory committee;

5. A description of the extent to which the meeting was open to the public;

6. A description of public participation, including a list of members of the public who presented oral or written statements; and

7. Copies of reports or written statements received from members of the public; and

8. An estimate of the number of members of the public who attended the meeting.

f. In accordance with FACA, no meeting of the advisory committee will be held in the absence of the Designated Federal Employee or a delegate. The Designated Federal Employee is authorized to adjourn any advisory committee meeting whenever he or she determines adjournment to be in the public interest.

9. *Support Service.* The Bank's Chief Operating Officer may provide staff support services for the Energy Conservation Advisory Committee. General support services provided to the Bank by various organizational units of the Department of Housing and Urban Development will be available to the advisory committee upon approval of the Bank's Chief Operating Officer.

10. *Estimated Support and Costs.* It is estimated that the annual operating cost of the Energy Conservation Committee will not exceed $12,500. This includes travel compensation, transcripts, and miscellaneous meeting expenses but excludes staff support costs which are estimated to be 270 staff hours.

11. *Travel and Compensation.*

a. Members of the Energy Conservation Advisory Committee, while engaged in the performance of formal advisory committee duties away from their homes or regular places of business, are allowed travel expenses on an actual expenses basis for travel incurred for official advisory committee business as authorized by 5 U.S.C. 5703(b).

b. Subject to the availability of appropriations, the rate of compensation for members of the advisory committee is equal to the daily equivalent of the maximum annual rate in effect for grade GS-15 of the General Schedule (5 U.S.C. 5332(a)) for each day, including travel time, during which they are engaged in the actual performance of duties vested in the advisory committee. Members will be paid only in connection with called meetings unless the Bank's Chief Operating Officer authorizes otherwise.

12. *Expiration of Charter.* The Energy Conservation Advisory Committee shall not terminate until the Solar Energy and Energy Conservation Bank ceases to exist, which by statute is September 30, 1987.

13. Date Charter filed with the Secretary of Housing and Urban Development as Chairperson of the Board of Directors of the Solar Energy and Energy Conservation Bank: September 2, 1983.

Solar Energy Advisory Committee Charter

1. *Purpose.* This establishes the charter for the Solar Energy Advisory Committee as required under the provisions of the Federal Advisory Committee Act (FACA) of 1972, Pub. L. No. 92-463, 5 U.S.C. App. I section 1.

2. *Objectives, Scope and Duties.* The Solar Energy Advisory Committee will advise the Board of Directors (the Board) of the Solar Energy and Energy Conservation Bank (the Bank) for the purpose of assisting the Bank in carrying out its activities relating to solar energy systems pursuant to the Solar Energy and Energy Conservation Bank Act (12 U.S.C. 3601). The function of the advisory committee shall be advisory only and all matters under its consideration shall be determined, in accordance with law, by the Board of Directors of the Bank.

3. *Authority.*

a. The Solar Energy Advisory Committee is mandated by and established under the authority of Section 508(b) of the Solar Energy and Energy Conservation Bank Act, Pub. L. No. 96-294, 94 Stat. 719, 724.

b. The Solar Energy Advisory Committee shall operate in conformance with the requirements outlined in the Solar Energy and Energy Conservation Bank Act, and all applicable laws, rules, regulations and guidelines promulgated by the Congress, the President, the General Services Administration and the Secretary of Housing and Urban Development.

4. *Composition.* The Solar Energy Advisory Committee shall be composed of five members who are not officers of, and whose principal employment is not by, a Federal, State or local governmental entity. Each of the following groups shall be represented by one member who is able, due to education, training and experience, to represent its views: consumers, financial institutions, builders, architectural or engineering interests, solar energy industry.

5. *Appointments.*

a. Members are appointed by the Board to serve two-year terms.

b. The terms of members are automatically extended until new members are appointed.

c. Any member who becomes an officer or employee of any governmental entity may continue as a member of the advisory committee for not longer than 90 days after becoming such an officer or employee.

d. The terms of all members shall automatically cease upon termination of the advisory committee.

e. Any member may be removed prior to the expiration of his or her term at the discretion of the Board.

6. *Chairperson.* The chairperson of the Solar Energy Advisory Committee shall be selected by the members of the advisory committee.

7. *Designated Federal Employee.* In accordance with section 10(e) of FACA, the Secretary of Housing and Urban Development has designated the Chief Operating Official of the Bank to attend every advisory committee meeting. The Chief Operating Officer is the highest official of the Bank, whether President, Executive Vice-President or Manager or in the case of absence or vacancy, the official designee of such official.

8. *Meetings.* The Solar Energy Advisory Committee shall convene in full session as needed and under the following conditions:

a. The Designated Federal Employee may call, and will approve in advance the scheduling and agenda of, advisory committee meetings and subcommittee meetings after consultation with the advisory committee chairperson (unless the office of Chairperson is vacant).

b. A notice of all advisory committee meetings will be published at least 15 days in advance in the Federal Register.

c. Three members of the Solar Energy Advisory Committee shall constitute a quorum, but a lesser number of members may hold hearings.

d. All advisory committee meetings will be open to the general public, except meetings concerned with matters listed in the Freedom of Information Act, 5 U.S.C. 552(b), covering such subjects as investigatory files, trade secrets, and internal Government memoranda which are not available to the public upon request.

e. Detailed minutes of each meeting of the advisory committee shall be kept and their accuracy shall be certified by the advisory committee chairperson. The minutes shall conform with Departmental regulations and shall include:

1. The time and place of the meeting;

2. A list of advisory committee members and staff, Board members or delegates and Departmental employees present at the meeting;

3. A summary of matters discussed and the conclusions reached;

4. Copies of all reports received, issued, or approved by the advisory committee;

5. A description of the extent to which the meeting was open to the public;

6. A description of public participation, including a list of members of the public who presented oral or written statements; and

7. Copies of reports or written statements received from members of the public; and

8. An estimate of the number of members of the public who attended the meeting.

f. In accordance with FACA, no meeting of the advisory committee will be held in the absence of the Designated Federal Employee or a delegate. The Designated Federal Employee is authorized to adjourn any advisory committee meeting whenever he or she determines adjournment to be in the public interest.

9. *Support Services.* The Bank's Chief Operating Officer may provide staff support services for the Solar Energy Advisory Committee. General support services provided to the Bank by various organizational units of the Department of Housing and Urban Development will be available to the advisory committee upon approval of the Bank's Chief Operating Officer.

10. *Estimated Support and Cost.* It is estimated that the annual operating cost of the Solar Energy Committee will not exceed $12,500. This includes travel compensation, transcripts, and miscellaneous meeting expenses but excludes staff support costs which are estimated to be 270 staff hours.

11. *Travel and Compensation.*

a. Members of the Solar Energy Advisory Committee, while engaged in the performance of formal advisory committee duties away from their homes or regular places of business, are allowed travel expenses on an actual expenses basis for travel incurred for official advisory committee business as authorized by 5 U.S.C. 5703(b).

b. Subject to the availability of appropriations, the rate of compensation for members of the advisory committee is equal to the daily equivalent of the maximum annual rate in effect for grade GS-15 of the General Schedule (5 U.S.C. 5332(a)) for each day, including travel time, during which they are engaged in the actual performance of duties vested in the advisory committee. Members will be paid only in connection with called meetings unless the Bank's Chief Operating Officer authorizes otherwise.

12. *Expiration of Charter.* The Solar Energy Advisory Committee shall not terminate until the Solar Energy and Energy Conservation Bank ceases to exist, which by statute is September 30, 1987.

13. Date Charter filed with the Secretary of Housing and Urban Development as Chairperson of the Board of Directors of the Solar Energy and Energy Conservation Bank: September 2, 1983.

[FR Doc. 83-24697 Filed 9-8-83; 8:45 am]
BILLING CODE 4210-01-M

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. D-83-703]

Amendment of Redelegation of Authority With Respect to Housing Management

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Housing—Federal Housing Commissioner is redelegating the authority to determine that a substantial breach or default under the Annual Contributions Contract (ACC) exists for the purpose of terminating the ACC with respect to a low-income public housing project assisted under the U.S. Housing Act of 1937 (42 U.S.C. 1437, et seq.), as amended (the Act). This amendment is necessary to enable Regional Administrators, and other authorized officials (Field Offices) to terminate ACCs with respect to a low-income public housing project when a local housing authority has failed to develop and complete a project in accordance with HUD requirements.

EFFECTIVE DATE: May 3, 1983.

FOR FURTHER INFORMATION CONTACT: Mildred E. Moore, Management Analysis and Services Division, Office of Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410 (202) 755-6004. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Housing-Federal Housing Commissioner is amending the Redelegation of Authority published on October 14, 1970 (35 FR 16104), as amended August 29, 1975 (40 FR 39021) to include authority to determine that a substantial breach or default under the

SOLAR ENERGY AND ENERGY CONSERVATION BANK

WRITTEN ACTION APPOINTING ADVISORY COMMITTEE MEMBERS AND CONVENING ADVISORY COMMITTEE MEETINGS

Section 508 of the Solar Energy and Energy Conservation Bank Act establishes an Energy Conservation Advisory Committee and a Solar Energy Advisory Committee for the purpose of providing advice to the Board in carrying out the activities of the Bank; provides that the Committees shall meet not less than twice each year; provides that the Board shall appoint to the Committees members who, on the basis of their education, training and experience, are able to represent the views of certain groups. The terms of two members from each Committee have expired, although the members continue to serve until the appointment of successors. Appointment of replacement members is necessary and desirable.

By execution of this Written Action I hereby approve the appointment of the following individuals to two-year terms.

Energy Conservation Advisory Committee

1. Lillian Warren-Lazenberry, to represent the views of consumers.

2. Phyllis J. Campbell, to represent the views of financial institutions.

Solar Energy Advisory Committee

1. Ray H. Daley, to represent the views of consumers.

2. Faye C. Agoes, to represent the views of financial institutions.

The Manager (or the President of the Bank, whenever the Manager is replaced by a President) is authorized to arrange for meetings of both of the Advisory Committees prior to the next meeting of the Board of Directors of the Bank. The Manager shall recommend that Committees begin consideration of long-term comprehensive and coordinated planning for the Bank.

Approved:

[Substitute] Director

Feb 8, 1984

Date

2/24/84

ANSWERS TO SENATOR TSONGAS' QUESTIONS FOR CONFIRMATION HEARING

1. HUD has undermined the success of solar and conservation programs, by not having a regional liaison for New England. Will this be redressed in the future?

As you know, the state administering agencies have it in their power to appoint a regional liaison and to the extent that this person assists in the delivery of solar bank programs to qualified applicants, we encourage their appointment.

It may be, in the case of Massachusetts, that the state was unaware of this authority. If such is the case, we would be pleased to provide them with the appropriate information and technical assistance in planning for, and making, this appointment.

You may be interested to know, however, that Western states participating in the Solar Bank Program, and represented by the Western Interstate Energy Board opted to deal directly with the Solar Bank feeling that their individual state agencies provided greater efficiency in dealing in these programs.

Nonetheless, there is no prohibition to the appointment of a regional liaison and we encourage the state of Massachusetts to contact the Bank to discuss such a possibility.

2. Administrative program funds are now limited at 2% levels and are wholly inadequate for local grant awards to operate successfully. Will a 5-7% level needed for smooth operation be endorsed, or considered?

You are correct in stating that administrative expenses are capped at 2% and we agree that such a level is inadequate. A Final Rule to raise the limit on administrative expenses from 2% to 12%, (or up to $20,000, whichever is greater), will be issued shortly. Based on public comments to the interim rule issued May 31, 1983, HUD proposed to increase to 5% this limitation. However, as you may know, the recently enacted Housing and Urban-Rural Recovery Act of 1983 (P.L. 98-181), now stipulates a 12% maximum.

3. The Mass. Energy Office has repeatedly requested in the last year that HUD look into whether IRS tax credits for energy conservation and installation measures are applicable. There has been no response so far and no guidelines. Will more responsiveness to state program needs be forthcoming?

Similarly, typical of federal constraints placed on state programs administration, HUD denied the authorization of passive solar and multifamily components permitted by the Mass. program manual. The state had to work thru its congressional delegation for clarifications.

Although the Solar Bank is not authorized to rule on the eligibility of investments for tax exemption we advised our state and territorial agencies, in a memo dated August 25, 1983 (attached) that the IRS has not yet issued rules for establishing eligible expenditures as a basis for claiming Federal tax credits. According to members of my staff, this information was also conveyed directly to the Massachusetts agency, via telephone. It is my understanding that the IRS has yet to issue those rules. I therefore recommend that the Massachusetts agency contact its local office of Internal Revenue Service.

On the passive solar/multifamily matter, the Massachusetts program was originally approved for residential conservation only, as defined in our award announcement in January 1983, which excluded solar energy and buildings with five or more dwelling units. It was not until August 1983, that we were advised by Massachusetts that they had proceeded to develop a program with passive solar/multifamily components, interpreting the award announcement to include these elements. It was technically impermissible to begin their program with activities for which funding had not been approved. Once a cooperative agreement was signed for the approved program, we were able to accommodate the expanded program scope by amendment to the cooperative egreement.

4. Drawdown of federal bank funds are often refused to states based on minor technicalities. Most recently, in Mass., local program operators subsidized this federal program with community funds, while program monies sat in the federal treasury. HUD refused to authorize drawdown while requesting minor changes in the Mass. program manual. Greater flexibility in the program administration is needed if the solar and energy conservation programs are to be successful.

The procedures for drawdown of Bank funds are based primarily on uniform requirements imposed on all Federal agencies using the Letter of Credit-Treasury Financial Communications System. We have added certain other administrative requirements for program monitoring purposes. One specific requirement is that acceptable program operating procedures be in place before drawdowns of funds for subsidies will be authorized. We place priority on review of all state procedures submitted and we expedite processing by telephone communications on any changes needed. We are even willing to accept verbal agreements of changes to be made to allow program expenditures to be made, followed by written confirmation, as now is the case for Massachusetts. We believe we are being as flexible and accommodating as is reasonably prudent for assurance that Federal funds are being used properly.

Attachment

CALLS FROM MASSACHUSETTS ENERGY OFFICE, 1982 THROUGH 1984 TO DATE
(DOES NOT INCLUDE CALLS TO MASSACHUSETTS)

DATE	MASSACHUSETTS ENERGY OFFICE EMPLOYEE
1982	
10/12	Steve Pinkerton, Assistant Director
1983	
1/3	Steve Pinkerton
1/13	Linda Sutlass, Head of Co-generation
3/8	Dan Schumm, Head of Installation
5/4	Dan Schumm
5/13	Dan Schumm
5/18	Dan Schumm
6/27	Dan Schumm
7/14	Dan Schumm
7/15	Dan Schumm
8/10	Dan Schumm
8/17	Dan Schumm
8/24	Dan Schumm
9/7	Dan Schumm
10/11	Bob Grasse, Assistant Legal Counsel
10/31	Bob Grasse
11/10	Marie Cullen, Head of Accounting
11/30	Dan Schumm
12/8	Bob Grasse
1984	
2/2	Marie Cullen
2/15	Sara Hamilton, Head of Renewables
2/17	Sara Hamilton

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410

AR ENERGY AND
RGY CONSERVATION BANK

August 25, 1983

To: All Selected Program Participants on the Solar Energy and Energy Conservation Bank Program

From: Richard H. Francis
Manager

Subject: Questions and Answers on the Interim Rule and Program Operation

This is the sixth transmittal of questions and answers, as attached, since June 14, 1983, for clarification purposes on the interim rule and program operation.

We have discovered a legal error in the Solar Bank interim rule provision on warranties. Sections 1800.49(f) (solar) and 1800.69(f) (conservation) both provide that warranties which meet the requirements of the RCS program will also meet the requirements of the Solar Bank program. This was based on the substantial similarity between the language in Sections 514(a)(2), 514(b)(5), 515(a)(2), and 542, for the RCS Program, of the Energy Security Act. However, Section 515(a)(2), which contains the solar warranties requirements, differs from the other sections by requiring that manufacturers' and suppliers' warranties be for three years, rather than for one year as permitted for all other warranties. Thus, the current Section 1800.49(f) is legally unauthorized to the extent that it permits solar manufacturers' and suppliers' warranties of less than three years. In the final rule, Section 1800.49(f) will either be eliminated or restricted to contractor's warranties. Please proceed on this basis if your program has a solar energy component.

As a reminder, please respond to my June 2, 1983, letter, if you have not done so, with the required cooperative agreement documentation or a written declination of the offer to participate in this program by the September 1, 1983, deadline. Decisive action will be taken subsequent to that date in obligating the funds allocated earlier this year.

Attachment

QUESTIONS AND ANSWERS ON SOLAR BANK REGULATIONS AND
PROGRAM OPERATION PROMPTED BY STATE INQUIRIES

Q. Section 1800.127 of the interim rule states that a Federal tax credit for the same expenditures subsidized by the Bank may not be claimed unless permitted by the IRS. What does the IRS permit?

A. The IRS has not yet issued final rules for establishing eligible expenditures as a basis for claiming Federal tax credits. The certificate required by section 1800.127(b)(2) is intended to prohibit applicants from claiming a Federal tax credit, for the same expenditures, unless permitted. This means that it must be established by the IRS that such claim is permissible prior to making such a claim. It is inappropriate, and perhaps illegal, to make such a claim and burden the IRS with determining that it is disallowed. The Bank cannot make such a determination.

Q. Are nursing homes, rest homes, and the like, eligible multifamily residential buildings under the Bank's program?

A. The Bank's interim rule does not define multifamily residential buildings sufficiently to answer the above question. Accordingly, the following guidelines are provided for use in establishing their eligibility. The building must:

1. Be used as a residence. At least half of the floor space of the building should be used for residential purposes, which would include dwelling units and any common dining facility but exclude office space, commercial retail space, health care space, and visitors waiting rooms.

2. Contain five or more dwelling units. A dwelling unit must contain at least one room, separate bathroom facilities, either private or shared, and a kitchen, unless the building or building complex contains a central kitchen or dining facility.

3. Contain at least one system for heating or cooling or both.

4. Be used primarily by year-round, non-transient, residents.

In addition, there should be reasonable assurance, as determined by the state/local administering agency, that the building will continue to serve as a multifamily residential building for the foreseeable future.

Q. Do the requirements of Section 1800.135, applicability of general HUD regulations, apply directly to the states or only to the Bank? What about lead-based paint in particular?

A. The requirement prohibiting the use of lead-based paint does apply directly to all state/local administering agencies and should have been in Section 1800.137, Other Federal Requirements. The other provisions of Section 1800.135 are to be considered as internal Bank operating requirements.

Q. The cooperative agreement with each state provides that certain attachments to OMB Circular A-102 are incorporated by reference. Do the requirements in those attachments apply to a governmental body which receives payments from the state, e.g., a city which receives Bank funds to pay contractors for improvements to dwelling units of applicants under the Bank program?

A. The Bank only requires the states to comply with the specified attachments to OMB Circular A-102. We do not regard recipients of money from the state as "subgrantees." However, a state may impose additional requirements at its discretion, including a requirement to comply with A-102. Also, when Bank funds are used in combination with funds provided under another Federal program, requirements of the other program are not superseded.

Q. Does the Bank plan to have any National level meeting or seminar in the near future to assist states in implementing their programs?

A. The Bank would consider participating in a coordinated meeting for the purpose of providing information or clarifications to resolve startup difficulties or problems being encountered. Most difficulties encountered to date, however, have been best handled through a request for waiver per section 1800.133 of the interim rule which could not have been resolved in a meeting.

APPENDIX III

Additional Statement Submitted for the Record

CHAMBER OF COMMERCE
OF THE
UNITED STATES OF AMERICA

RICHARD L. BREAULT
GROUP VICE PRESIDENT, POLICY

1615 H STREET, N.W.
WASHINGTON, D.C. 20062
202/463-5417

March 28, 1984

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
APR 2 1984

The Honorable James A. McClure
Chairman
Energy and Natural Resources Committee
United States Senate
Washington, D.C. 20510

Dear Senator McClure:

I understand President Reagan's nomination of Richard Francis to be President of the Solar Bank is currently before the Energy and Natural Resources Committee which you chair.

For the past five years, members of the Chamber's Board and staff have worked with Mr. Francis in his various capacities as an association executive, as part of the support staff of the President's Commission on Housing and in several different assignments at the Department of Housing and Urban Development, including managing the Solar Bank. We have found him to be of unquestioned integrity and a capable and effective executive.

The Chamber is aware of the institutional disagreement between the President and Congress on the continued existence of the Solar Bank. In our judgement, Mr. Francis could not ethically accept a presidential call to service if he failed to support the Administration's proposal on the Solar Bank when the question of reauthorizing or appropriating funds for the Bank comes before Congress. However, once the issue is settled, the Chamber believes Mr. Francis can be relied on to faithfully carry out both spirit and letter of the law. We believe his actions since assuming responsibility for managing the Solar Bank prove he is successfully and prudently fulfilling those duties now.

The U.S. Chamber supports Mr. Francis's nomination.

Thank you for your consideration of our views. I hope you will act favorably on Mr. Francis's nomination.

Sincerely,

Richard L. Breault

Richard L. Breault

○